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## SENATE RESOLUTION

REQUESTING THE LEGISLATIVE REFERENCE BUREAU TO CONDUCT A STUDY RELATING TO STATUTORY AUTHORITY TO ALLOW COLLECTIVE NEGOTIATION BETWEEN PHYSICIANS AND HEALTH CARE INSURERS IN HAWAII TO RESTRAIN OR BALANCE THE MONOPSONISTIC MARKET POWER OF HEALTHCARE INSURERS OVER INDEPENDENT PHYSICIANS.

1 WHEREAS, the health care system in Hawaii is in crisis  
2 because there is a severe shortage of physicians in the State;  
3 and  
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5 WHEREAS, the gap between supply and demand for doctors in  
6 Hawaii has grown by sixty-five percent since 2010, according to  
7 the recent Physician Workforce Assessment Study conducted in  
8 2020 by the Area Health Education Center of Hawaii at the  
9 University of Hawaii; and  
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11 WHEREAS, the biannual Physician Workforce Assessment Study  
12 also reported an estimated shortage of eight hundred twenty  
13 physicians with the neighbor islands being hardest hit; 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 Hawaii  
17 island, thirty-six percent for Maui County, and thirty-two  
18 percent for 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, and poses  
22 a serious problem for Hawaii residents because it prevents  
23 timely and appropriate access to life-saving healthcare; and  
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25 WHEREAS, a primary barrier to recruiting and retaining  
26 physicians is the fact that physician compensation in Hawaii is  
27 relatively low and not competitive nationally, as evidenced by  
28 Hawaii's inability to attract qualified out-of-state physicians  
29 or to retain graduates from the John A. Burns School of Medicine  
30 in Honolulu; and  
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1 WHEREAS, a major factor in the relatively low compensation  
2 for Hawaii's physicians is the State's highly concentrated  
3 health insurance market; and  
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5 WHEREAS, an examination of the Hawaii insurance market by  
6 the American Medical Association (AMA) entitled "Competition in  
7 Health Insurance: A Comprehensive Study of U.S. Markets"  
8 (2019), reveals a highly concentrated total insurance market,  
9 with a single insurer controlling sixty-seven percent of the  
10 total market, and its second largest insurer controlling twenty-  
11 one percent; and  
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13 WHEREAS, the AMA ranked Hawaii to be the third least  
14 competitive health insurance market in the nation, behind only  
15 Alabama and Louisiana; and  
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17 WHEREAS, highly concentrated health insurance markets are  
18 said to cause disparate, imbalanced, and monopsonistic market  
19 power between insurers and the independent physicians providing  
20 health care services; and  
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22 WHEREAS, in addition to market concentration, the  
23 relatively weak bargaining power of physicians compared to  
24 health insurers is also a result of federal antitrust law, which  
25 generally bars physicians from collectively negotiating their  
26 contracts with insurers, and contributes to the monopsonistic  
27 market favoring insurers; and  
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29 WHEREAS, independent physicians contend that such monopsony  
30 power enables health plans to approach contract negotiations  
31 with a "take-it-or-leave-it" attitude that puts physicians in  
32 the untenable position of accepting inappropriate and "adhesive"  
33 contract terms; and  
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35 WHEREAS, in *Parker v. Brown*, 317 U.S. 341 (1943), the  
36 United States Supreme Court created an exemption to federal  
37 antitrust laws referred to as the "State Action Doctrine" or the  
38 "Parker Immunity Doctrine", and authorized state actions that  
39 could foreseeably cause anti-competitive effects when taken  
40 pursuant to a clearly expressed and legislatively adopted state  
41 policy; and  
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1           WHEREAS, in 2009, the Alaska Legislature found that  
2 permitting physicians to engage in collective negotiation of  
3 contracts with health benefit plans is appropriate and necessary  
4 to benefit competition in the health care market, and adopted a  
5 statute consistent with the Parker Immunity Doctrine to  
6 authorize collective negotiations between competing physicians  
7 and health benefit plans; and  
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9           WHEREAS, it is appropriate and necessary for the State of  
10 Hawaii to consider authorizing physicians to collectively  
11 negotiate their contracts with health benefit plans to address  
12 the physician shortage crisis in Hawaii; now, therefore,  
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14           BE IT RESOLVED by the Senate of the Thirtieth Legislature  
15 of the State of Hawaii, Regular Session of 2020, that the  
16 Legislative Reference Bureau is requested to conduct a study of  
17 the Alaska Legislation, the Parker Immunity Doctrine and its  
18 current legal status, the extent of any statutory or policy  
19 implementation by other states, and whether and how enacting a  
20 statute similar to Alaska legislation would impact the exemption  
21 of the State's Prepaid Health Care Act from the federal Employee  
22 Retirement Income Security Act of 1974; and  
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24           BE IT FURTHER RESOLVED that the Legislative Reference  
25 Bureau is requested to submit a report of its findings and  
26 conclusions, including any recommended legislation to allow  
27 collective negotiation between physicians and health care  
28 insurers in Hawaii, to the Legislature no later than twenty days  
29 prior to the convening of the Regular Session of 2021; and  
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31           BE IT FURTHER RESOLVED that certified copies of this  
32 Resolution be transmitted to the Senate President, Speaker of  
33 the House of Representatives, and Director of the Legislative  
34 Reference Bureau.

