H .B. NO. 3155

A BILL FOR AN ACT

RELATING TO VOLUNTEER MEDICAL ASSISTANCE SERVICES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Chapter 321, Hawaii Revised Statutes, is amended by adding to part I a new section to be appropriately designated and to read as follows:

"**§321- Volunteer medical assistance personnel.** (a) All volunteer medical assistance personnel including:

(1) Physicians;

(2) Psychologists;

(3) Nurses;

(4) Emergency medical technicians;

(5) Social workers; and

(6) Mobile intensive care technicians

licensed or certified in this State, or employed by a health care facility, while providing volunteer assistance services on behalf of the State or a county, including participation during periods of assistance services and assistance training, shall be deemed state or county employees, as the case may be, and shall have the powers, duties, rights, and privileges of such in the

1 performance of their duties as prescribed by or under the
2 authority of the governor or a county.
3 (b) In the case of injury or death arising out of and in
4 the performance of duty pursuant to this section, including duty
5 performed during periods of training, all volunteer medical
6 assistance personnel and their dependents shall be entitled to
7 all of the benefits provided in chapter 386, including medical
8 services and supplies. In the case of injury or death, no
9 volunteer medical assistance personnel shall be excluded from
10 coverage of chapter 386. Benefits shall be based on average
11 weekly wages set forth in section 386-51, or based on earnings
12 from the usual employment of the person, or based on earnings at
13 the rate of $20 a week, whichever is most favorable to the
14 claimant. Nothing in this section shall adversely affect the
15 right of any person to receive any benefits or compensation
16 under any act of Congress.
17 (c) Except in cases of willful or criminal misconduct,
18 gross negligence, or reckless misconduct, any volunteer medical
19 assistance personnel providing volunteer assistance services
20 shall not be liable for the death of or injury to persons, or
21 for damage to property, as a result of any act or omission in
22 the course of rendering volunteer assistance services pursuant

to this section. No act or omission shall be imputed to the owner of any vehicle by reason of ownership thereof; provided that nothing in this section shall preclude recovery by any person for injury or damage sustained from the operation of any vehicle that may be insured under section 41D-8 to the extent of the insurance.

(d) Nothing in this section shall be construed to affect any civil action brought by the State or a county against any volunteer of the State or a county.

(e) Nothing in this section shall be construed to affect the liability of the State or a county with respect to harm caused by volunteer medical assistance personnel to any person.

(f) For the purposes of this section:

"Volunteer assistance services" means the rendering of professional medical services that are provided on behalf of the State or a county and that have been accepted by any authorized State or county personnel, respectively; provided that services provided pursuant to section 321-23.3 shall not considered to be volunteer assistance services. Volunteer assistance services shall include but not be limited to the rendering of professional medical services in support of vaccination campaigns or outreach clinics."

SECTION 2. Section 662D-3, Hawaii Revised Statutes, is amended to read as follows:

"[~~[~~]**§662D-3**[~~]~~] **Exception.** Notwithstanding section 662D-2, if otherwise permitted by law, a person may sue and recover civil damages from a volunteer based upon:

(1) Any conduct engaged in by the volunteer that would constitute gross negligence, wilful and wanton misconduct, or intentional misconduct;

(2) Any act or omission in connection with the operation of a motor vehicle;

(3) Any conduct engaged in by the volunteer while the volunteer is unreasonably interfering with the lawful activities of another;

(4) Any conduct engaged in by the volunteer that takes place on private property when the volunteer's presence on the property was not consented to by the owner;

(5) Any act or omission within a volunteer's scope of practice for which the volunteer is licensed, certified, permitted, or registered under state law to perform[~~;~~], except that this paragraph shall not apply

to volunteer assistance services provided pursuant to section 321- ; and

(6) Any criminal offense committed by the volunteer."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

INTRODUCED BY: Calvin K.Y. Say

BY REQUEST

JAN 22 2008

H.B. NO. 3155

Report Title:
Volunteer Medical Assistance Services

Description:
Provides immunity from liability and workers' compensation for licensed medical personnel providing volunteer medical services on behalf of the State or a county.

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JUSTIFICATION SHEET

DEPARTMENT: Health

TITLE: A BILL FOR AN ACT RELATING TO VOLUNTEER MEDICAL ASSISTANCE SERVICES.

PURPOSE: Provides immunity from liability and workers' compensation for licensed medical personnel providing volunteer services on behalf of the State or a county.

MEANS: Add a new section to part I of chapter 321, Hawaii Revised Statutes, and amend section 662D-3, Hawaii Revised Statutes (HRS).

JUSTIFICATION: Volunteer workers who hold medical licenses and who are performing volunteer activities within the scope of their license are indemnified under Hawaii law when responding to an emergency, but are not protected from liability if they are volunteering for the State for a non-emergency activity, including training for future volunteer service. This limits the ability of the State to draw upon these volunteers as a critical public health resource.

Under section 321-23.3, HRS, licensed medical professionals responding to a disaster or mass casualty event "shall not be liable for the death of or injury to persons, or for damage to property, as a result of any act or omission in the course of rendering professional medical care," "[e]xcept in cases of willful misconduct."

Under section 662D-2, volunteers for the State "shall be immune from civil liability in any action on the basis of any act or omission of a volunteer resulting in damage or injury," except for "[a]ny act or omission within a volunteer's scope of practice for

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which the volunteer is licensed, certified, permitted, or registered under state law" Consequently, licensed medical professionals who volunteer their services to the State for non-emergency activities such as a vaccination campaign or homeless outreach clinic are not covered for professional liability.

Medical professional volunteers are urgently needed to supplement the State's staff in preparation for disasters and emergencies.

Lack of coverage for professional liability will likely mean that these valuable workers will not participate as state volunteers. Those with the time to volunteer are often retired professionals who hold a license but not an expensive personal liability insurance policy. As much as they may wish to help, they are unlikely to risk losing their home or other assets as the result of a lawsuit.

This lack of regular volunteer participation from medical professionals will have consequences for the State's emergency readiness. Utilization of volunteers for periodic non-emergency activities and events keeps the volunteer force active and interested, provides an opportunity for volunteer training, and allows practice of the system for calling volunteers out to respond.

In order to build a strong volunteer workforce of medical professionals to support public health interventions and for emergency medical surge capacity, we strongly believe that licensed medical professionals who volunteer for the state should be indemnified in both emergency and non-emergency situations, providing that they are acting within the scope of their license and assigned volunteer role and without willful misconduct.

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Impact on the public: This measure will provide the public with the benefits of an enhanced volunteer workforce organized and trained to respond to emergencies.

Impact on the department and other agencies: Will provide the department with a trained, organized reserve capability to serve the public in emergencies and disasters.

GENERAL FUND: No impact, except in cases of injuries or deaths to volunteers covered by this measure. Without this protection, plaintiffs' attorneys are still most likely to look to the State's deep pockets.

OTHER FUNDS:

PPBS PROGRAM DESIGNATION: HTH-131.

OTHER AFFECTED AGENCIES: Department of the Attorney General.

EFFECTIVE DATE: Upon approval.