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

WHEREAS, the health care system in Hawaii is in crisis because there is a severe shortage of physicians in the State; and

WHEREAS, the gap between supply and demand for doctors in Hawaii has grown by sixty-five percent since 2010, according to the recent Physician Workforce Assessment Study conducted in 2020 by the Area Health Education Center of Hawaii at the University of Hawaii; and

WHEREAS, the biannual Physician Workforce Assessment Study also reported an estimated shortage of eight hundred twenty physicians with the neighbor islands being hardest hit; and

WHEREAS, there is a physician shortfall of sixteen percent on Oahu, compared with a forty-four percent shortfall for Hawaii island, thirty-six percent for Maui County, and thirty-two percent for Kauai; and

WHEREAS, the physician shortage is due to the State's increasing inability to recruit and retain physicians, and poses a serious problem for Hawaii residents because it prevents timely and appropriate access to life-saving healthcare; and

WHEREAS, a primary barrier to recruiting and retaining physicians is the fact that physician compensation in Hawaii is relatively low and not competitive nationally, as evidenced by Hawaii's inability to attract qualified out-of-state physicians or to retain graduates from the John A. Burns School of Medicine in Honolulu; and
WHEREAS, a major factor in the relatively low compensation for Hawaii's physicians is the State's highly concentrated health insurance market; and

WHEREAS, an examination of the Hawaii insurance market by the American Medical Association (AMA) entitled "Competition in Health Insurance: A Comprehensive Study of U.S. Markets" (2019), reveals a highly concentrated total insurance market, with a single insurer controlling sixty-seven percent of the total market, and its second largest insurer controlling twenty-one percent; and

WHEREAS, the AMA ranked Hawaii to be the third least competitive health insurance market in the nation, behind only Alabama and Louisiana; and

WHEREAS, highly concentrated health insurance markets are said to cause disparate, imbalanced, and monopsonistic market power between insurers and the independent physicians providing health care services; and

WHEREAS, in addition to market concentration, the relatively weak bargaining power of physicians compared to health insurers is also a result of federal antitrust law, which generally bars physicians from collectively negotiating their contracts with insurers, and contributes to the monopsonistic market favoring insurers; and

WHEREAS, independent physicians contend that such monopsony power enables health plans to approach contract negotiations with a "take-it-or-leave-it" attitude that puts physicians in the untenable position of accepting inappropriate and "adhesive" contract terms; and

WHEREAS, in Parker v. Brown, 317 U.S. 341 (1943), the United States Supreme Court created an exemption to federal antitrust laws referred to as the "State Action Doctrine" or the "Parker Immunity Doctrine", and authorized state actions that could foreseeably cause anti-competitive effects when taken pursuant to a clearly expressed and legislatively adopted state policy; and
WHEREAS, in 2009, the Alaska Legislature found that permitting physicians to engage in collective negotiation of contracts with health benefit plans to be appropriate and necessary to benefit competition in the health care market, and adopted a statute consistent with the Parker Immunity Doctrine to authorize collective negotiations between competing physicians and health benefit plans; and

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

BE IT RESOLVED by the Senate of the Thirtieth Legislature of the State of Hawaii, Regular Session of 2020, that the Legislative Reference Bureau is requested to conduct a study of the Alaska Legislation, the Parker Immunity Doctrine and its current legal status, the extent of any statutory or policy implementation by other states, and the feasibility of enacting a statutory authority compliant with the Parker Immunity Doctrine to allow collective negotiation between physicians and health care insurers in Hawaii; and

BE IT FURTHER RESOLVED that the Legislative Reference Bureau is requested to submit a report of its findings and conclusions, including any recommended legislation, to the Legislature no later than twenty days prior to the convening of the Regular Session of 2021; and

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

OFFERED BY: [Signature]

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