

STAND. COM. REP. NO.

1592

Honolulu, Hawaii

, 2021

MAR 31

RE: H.C.R. No. 85  
H.D. 2

Honorable Scott K. Saiki  
Speaker, House of Representatives  
Thirty-First State Legislature  
Regular Session of 2021  
State of Hawaii

Sir:

Your Committee on Consumer Protection & Commerce, to which was referred H.C.R. No. 85, H.D. 1, entitled:

"HOUSE CONCURRENT RESOLUTION REQUESTING THE LEGISLATIVE REFERENCE BUREAU TO CONDUCT A STUDY RELATING TO THE STATE'S AUTHORITY TO ALLOW COLLECTIVE NEGOTIATION BETWEEN PHYSICIANS AND HEALTH CARE INSURERS IN HAWAII TO RESTRAIN OR BALANCE THE MONOPSONISTIC MARKET POWER OF HEALTH CARE INSURERS OVER INDEPENDENT PHYSICIANS,"

begs leave to report as follows:

The purpose of this measure is to request that the Legislative Reference Bureau conduct a study on the State's authority to allow collective negotiation between physicians and health care insurers in Hawaii to restrain or balance the monopsonistic market power of health care insurers over independent physicians.

Your Committee received testimony in support of this measure from the Hawaii Medical Association and one individual. Your Committee received testimony in opposition to this measure from the Hawaii Medical Service Association. Your Committee received comments on this measure from the Legislative Reference Bureau.

2021-2868 HCR85 HD2 HSCR HMSO



Your Committee finds that the existing physician shortage in Hawaii has been exacerbated by the COVID-19 pandemic, with shortages of twenty percent on Oahu, fifty-three percent in Hawaii County, forty-two percent in Maui County, and thirty-three percent on Kauai reported for 2020. Your Committee further finds that one of the primary barriers in the State's inability to recruit and retain physicians is the relatively low level of physician compensation in the State, which is not competitive nationally and stems from the State's highly concentrated health insurance market.

Your Committee notes that the Legislative Reference Bureau testified that it has no specific expertise regarding antitrust law, the federal Employee Retirement Income Security Act of 1974 (ERISA), Hawaii's Prepaid Health Care Act (PHCA), or how enacting state action immunity legislation could impact the State's exemption under ERISA for the PHCA. As such, your Committee believes the study should be narrowed to provide factual information regarding any relevant actions taken in other states, including Alaska, and the status of the immunity doctrine under *Parker v. Brown*, 317 U.S. 341 (1943).

Your Committee has amended this measure by:

- (1) Narrowing the requested study to include only the examination of the *Parker* immunity doctrine and its current legal status and the extent of any statutory or policy implementation by other states relating to collective negotiation by physicians;
- (2) Amending its title to read, "REQUESTING THE LEGISLATIVE REFERENCE BUREAU TO CONDUCT A STUDY EXAMINING THE *PARKER* IMMUNITY DOCTRINE AND ITS CURRENT LEGAL STATUS AND THE EXTENT OF ANY STATUTORY OR POLICY IMPLEMENTATION BY OTHER STATES RELATING TO COLLECTIVE NEGOTIATION BY PHYSICIANS.";
- (3) Clarifying that the Legislative Reference Bureau needs to only submit its findings, not any recommendations or proposed legislation, to the Legislature; and
- (4) Making technical, nonsubstantive amendments for the purposes of clarity, consistency, and style.



As affirmed by the record of votes of the members of your Committee on Consumer Protection & Commerce that is attached to this report, your Committee concurs with the intent and purpose of H.C.R. No. 85, H.D. 1, as amended herein, and recommends its adoption in the form attached hereto as H.C.R. No. 85, H.D. 2.

Respectfully submitted on  
behalf of the members of the  
Committee on Consumer  
Protection & Commerce,

*Aaron Ling Johanson for*  
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AARON LING JOHANSON, Chair



**Record of Votes of the Committee on Consumer Protection & Commerce**

<b>Bill/Resolution No.:</b> <i>HCRC 85 HD 1</i>	<b>Committee Referral:</b> <i>HHH, CPC</i>	<b>Date:</b> <i>3/29/21</i>		
<input type="checkbox"/> The committee is reconsidering its previous decision on the measure.				
<b>The recommendation is to:</b> <input type="checkbox"/> Pass, unamended (as is) <input checked="" type="checkbox"/> Pass, with amendments (HD) <input type="checkbox"/> Hold <input type="checkbox"/> Pass short form bill with HD to recommit for future public hearing (recommit)				
CPC Members	Ayes	Ayes (WR)	Nays	Excused
1. JOHANSON, Aaron Ling (C)	✓			
2. KITAGAWA, Lisa (VC)	✓			
3. AQUINO, Henry J.C.	✓			
4. HAR, Sharon E.	✓			
5. HASHEM, Mark J.	✓			
6. KONG, Sam Satoru	✓			
7. MIZUNO, John M.	✓			
8. MORIKAWA, Dee	✓			
9. ONISHI, Richard H.K.				✓
10. TARNAS, David A.	✓			
11. MATSUMOTO, Lauren	✓			
<b>TOTAL (11)</b>	<i>10</i>	<i>0</i>	<i>0</i>	<i>1</i>
<b>The recommendation is:</b> <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted If joint referral, _____ did not support recommendation. <span style="margin-left: 150px;">committee acronym(s)</span>				
<b>Vice Chair's or designee's signature:</b>				
<b>Distribution:</b> Original (White) – Committee    Duplicate (Yellow) – Chief Clerk's Office    Duplicate (Pink) – HMSO				