

Honolulu, Hawaii

FEB 15 2013

RE: S.B. No. 1308

S.D. 1

Honorable Donna Mercado Kim  
President of the Senate  
Twenty-Seventh State Legislature  
Regular Session of 2013  
State of Hawaii

Madam:

Your Committee on Health, to which was referred S.B. No. 1308  
entitled:

"A BILL FOR AN ACT RELATING TO HEALTH CARE PROVIDERS,"

begs leave to report as follows:

The purpose and intent of this measure is to establish a new rule of evidence that allows expressions of apology or compassion and other benevolent acts to be made by health care providers without fear of these statements or acts being used as evidence to prove liability for any claim arising out of an adverse medical outcome.

Your Committee received testimony in support of this measure from the Hawaii Medical Association. Testimony in opposition to this measure was submitted by the Hawaii Association for Justice.

Your Committee finds that rule 409.5 of the Hawaii Rules of Evidence allows an individual or entity to express sympathy and condolence concerning the consequences of an event in which the declarant was a participant without the expression being used to establish liability. However, this rule does not specifically protect communication that amounts to an apology, which could be admissible as evidence to establish liability, or communication with a health care provider regarding the consequences of an unanticipated medical care outcome involving pain, suffering, or death.



Testimony submitted by the Hawaii Medical Association indicated that thirty-four states have enacted apology laws that protect expressions of apology made by health care providers from being used as evidence to prove liability. The Hawaii Medical Association also cited studies that indicate that when doctors apologize for adverse medical outcomes, patients are less likely to litigate, thereby reducing the number of malpractice claims and reducing litigation costs. This measure protects communication that amounts to an apology made by a health care provider so that these statements may be made without fear of being used to prove liability.

Your Committee notes the concerns raised by the Hawaii Association for Justice that this measure should be first submitted to the Judiciary's Standing Committee on Evidence, which possesses the expertise, responsibility, and institutional knowledge needed for consideration of changes to the rules of evidence like this measure proposes. Your Committee further notes the discussion with the Hawaii Medical Association and Hawaii Association for Justice regarding the different types of expressions that could be made by a health care provider and encourages this discussion to continue with your Committee on Judiciary and Labor if that committee chooses to schedule this measure for a hearing.

Accordingly, your Committee has amended this measure by:

- (1) Deleting the word "fault" as one of the expressions that could be made by a health care provider concerning an unanticipated medical care outcome;
- (2) Inserting an effective date of January 1, 2050, to encourage further discussion; and
- (3) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Health that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1308, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 1308, S.D. 1, and be referred to the Committee on Judiciary and Labor.



Respectfully submitted on  
behalf of the members of the  
Committee on Health,



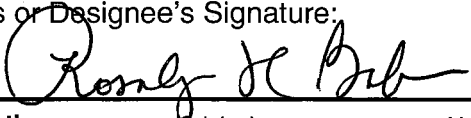
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JOSH GREEN, Chair



The Senate  
Twenty-Seventh Legislature  
State of Hawai'i

**Record of Votes**  
**Committee on Health**  
**HTH**

Bill / Resolution No.:* <div style="font-size: 1.2em; font-family: cursive;">SB 1308</div>	Committee Referral: <div style="font-size: 1.2em; font-family: cursive;">HTH, JDL</div>	Date: <div style="font-size: 1.2em; font-family: cursive;">02/11/2013</div>		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div> <input type="checkbox"/> Pass, unamended 2312         </div> <div> <input checked="" type="checkbox"/> Pass, with amendments 2311         </div> <div> <input type="checkbox"/> Hold 2310         </div> <div> <input type="checkbox"/> Recommit 2313         </div> </div>				
Members	Aye	Aye (WR)	Nay	Excused
GREEN, Josh (C)	✓			
BAKER, Rosalyn H. (VC)	✓			
CHUN OAKLAND, Suzanne	✓			
NISHIHARA, Clarence K.	✓			
SLOM, Sam		✓		
<b>TOTAL</b>	4	1	—	—
Recommendation: <div style="display: flex; justify-content: space-around; margin-top: 10px;"> <input checked="" type="checkbox"/> Adopted         <input type="checkbox"/> Not Adopted         </div>				
Chair's or Designee's Signature: <div style="font-size: 1.5em; font-family: cursive; margin-top: 10px;">  </div>				
Distribution: <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div>Original File with Committee Report</div> <div>Yellow Clerk's Office</div> <div>Pink Drafting Agency</div> <div>Goldenrod Committee File Copy</div> </div>				

\*Only one measure per Record of Votes