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# HOUSE CONCURRENT RESOLUTION

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.

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 physicians  
6 in Hawaii continues to increase and has been exacerbated by the  
7 COVID-19 pandemic, according to the 2020 Physician Workforce  
8 Assessment Project conducted by the Area Health Education Center  
9 at the University of Hawaii at Manoa John A. Burns School of  
10 Medicine; and  
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12           WHEREAS, the Physician Workforce Assessment Project also  
13 reported an estimated shortage of one thousand eight physicians,  
14 with the neighbor islands being hardest hit; and  
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16           WHEREAS, the physician shortage in each county in 2020 was  
17 twenty percent on Oahu, compared with fifty-three percent for  
18 Hawaii island, forty-two percent for Maui County, and  
19 thirty-three percent for Kauai; and  
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21           WHEREAS, the physician shortage is due to the State's  
22 increasing inability to recruit and retain physicians, and poses  
23 a serious problem for Hawaii residents because it prevents  
24 timely and appropriate access to life-saving health care; and  
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26           WHEREAS, according to the John A. Burns School of Medicine,  
27 in 2020, many physicians elected to retire or decrease their



1 practicing hours because of the COVID-19 pandemic, further  
2 worsening the State's physician shortage crisis; and

3  
4 WHEREAS, a primary barrier to recruiting and retaining  
5 physicians is the fact that physician compensation in Hawaii is  
6 relatively low and not competitive nationally, as evidenced by  
7 Hawaii's inability to attract qualified out-of-state physicians  
8 or to retain graduates from the John A. Burns School of Medicine  
9 in Honolulu; and

10  
11 WHEREAS, a major factor in the relatively low compensation  
12 for Hawaii's physicians is the State's highly concentrated  
13 health insurance market; and

14  
15 WHEREAS, a 2019 examination of the Hawaii insurance market  
16 by the American Medical Association entitled "Competition in  
17 Health Insurance: A Comprehensive Study of U.S. Markets",  
18 reveals a highly concentrated total insurance market in Hawaii,  
19 with a single insurer controlling sixty-seven percent of the  
20 total market, and its second largest insurer controlling twenty-  
21 one percent; and

22  
23 WHEREAS, the American Medical Association ranked Hawaii to  
24 be the third least competitive health insurance market in the  
25 nation, behind only Alabama and Louisiana; and

26  
27 WHEREAS, highly concentrated health insurance markets are  
28 said to cause disparate, imbalanced, and monopsonistic market  
29 power between insurers and the independent physicians providing  
30 health care services; and

31  
32 WHEREAS, in addition to market concentration, the  
33 relatively weak bargaining power of physicians compared to  
34 health insurers is also a result of federal antitrust law, which  
35 generally bars physicians from collectively negotiating their  
36 contracts with insurers, and contributes to the monopsonistic  
37 market favoring insurers; and

38  
39 WHEREAS, independent physicians contend that such monopsony  
40 power enables health plans to approach contract negotiations  
41 with a "take-it-or-leave-it" attitude that puts physicians in



1 the untenable position of accepting inappropriate and adhesive  
2 contract terms; and

3  
4 WHEREAS, in *Parker v. Brown*, 317 U.S. 341 (1943), the  
5 United States Supreme Court created an exemption to federal  
6 antitrust laws, referred to as state action immunity or the  
7 *Parker* immunity doctrine, which authorized state actions that  
8 could foreseeably cause anti-competitive effects when taken  
9 pursuant to a clearly expressed and legislatively adopted state  
10 policy; and

11  
12 WHEREAS, in 2009, the Alaska Legislature found that  
13 permitting physicians to engage in collective negotiation of  
14 contracts with health benefit plans is appropriate and necessary  
15 to benefit competition in the health care market, and enacted a  
16 law consistent with the *Parker* immunity doctrine to authorize  
17 collective negotiations between competing physicians and health  
18 benefit plans; now, therefore,

19  
20 BE IT RESOLVED by the House of Representatives of the  
21 Thirty-first Legislature of the State of Hawaii, Regular Session  
22 of 2021, the Senate concurring, that the Legislative Reference  
23 Bureau is requested to conduct a study to examine the *Parker*  
24 immunity doctrine and its current legal status and the extent of  
25 any statutory or policy implementation by other states relating  
26 to collective negotiation by physicians; and

27  
28 BE IT FURTHER RESOLVED that the Legislative Reference  
29 Bureau is requested to submit a report of its findings to the  
30 Legislature no later than twenty days prior to the convening of  
31 the Regular Session of 2022; and

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33 BE IT FURTHER RESOLVED that a certified copy of this  
34 Concurrent Resolution be transmitted to the Director of the  
35 Legislative Reference Bureau.

