

Hawaii

Notes: SB 739 was introduced 1/22/2007 and as of 6/28/07 is still in process.

Very similar to California's law, but adds definition of "Alternative Health Care" (a very limited list), along with a few other things.

**Report Title:**

*Health; Medical Freedom Act*

**Description:**

*Allows unlicensed practitioners of health-related services to provide services to the public without it being considered the practice of medicine under certain circumstances.*

THE SENATE  
TWENTY-FOURTH LEGISLATURE, 2007  
STATE OF HAWAII

**S.B. NO.** <sup>739</sup>

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# A BILL FOR AN ACT

*RELATING TO HEALTH CARE.*

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

SECTION 1. Many state residents seek out health care from unlicensed complementary and alternative health care practitioners, such as those who practice herbology, homeopathy, aromatherapy, reiki, and therapeutic touch. These practitioners may unwittingly be violating Hawaii law prohibiting the unlicensed practice of medicine and other licensed health care professionals.

For example, section 453-1, Hawaii Revised Statutes, defines the practice of medicine to include "the use of drugs and medicines, water, electricity, hypnotism, or any means or method, or any agent, either tangible or intangible, for the treatment of disease in the human subject[.]" Unless a specific exemption is made by law, no person may practice medicine without a valid license from the board of medical examiners. The language defining the practice of medicine has been in place since 1896, before a number of the healing modalities used today were invented or in widespread use. A number of alternative and complementary healing modalities used today could conceivably fall within the rubric of the practice of medicine, or other licensed practice acts, even though they are not considered by their practitioners or the public to be exclusive practices.

The legislature finds that many complementary and alternative healing modalities do not pose a known risk to the health and safety of Hawaii residents and that the potential of restricting access to them for fear of a technical violation of state law is not warranted.

The purpose of this Act is to allow access for Hawaii residents to practitioners of these alternatives and complementary healing modalities, as long as they do not provide services that pose and imminent risk of significant harm to the public.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to title 6 to be appropriately designated and to read as follows:

**"CHAPTER**

**ALTERNATIVE AND COMPLEMENTARY HEALING MODALITIES**

**§ -1 Findings.** A substantial amount of unlicensed alternative and complementary nonmedical healing practitioners and modalities are being used by state residents. The provision of many of these services may be in technical violation of chapter 453, which contains a broad definition of the practice of medicine. This chapter allows access by Hawaii residents to unlicensed practitioners of these alternative and complementary healing modalities, as long as they do not pose a danger to public health.

**§ -2 Definitions.** As used in this chapter:

"Alternative or complementary healing modality" includes but is not limited to homeopathy, herbal therapies, traditional naturopathy, vitamins, relaxation methods, lifestyle diet, imagery, energy healing, and biofeedback.

"Health care professional" has the same meaning as in section 451D-2.

"Practice of medicine" has the same definition as in section 453-1.

"Practitioner" means a person offering an alternative or complementary healing modality who is not a licensed health care professional.

**§ -3 Alternative or complementary healing modality, when in violation of professional practice act.** A practitioner shall not be in violation of any health care professional practice act for unlicensed practice unless the practitioner:

- (1) Conducts surgery or any other procedure on another person that punctures the skin or harmfully invades the body;
- (2) Administers or prescribes x-ray radiation to another person;
- (3) Prescribes or administers legend drugs or controlled substances to another person;
- (4) Recommends the discontinuance of legend drugs or controlled substances prescribed by an appropriately licensed practitioner;
- (5) Diagnoses and treats a physical or mental condition of any person and in doing so intentionally causes that person an imminent and discernable risk of great bodily harm, serious physical or mental illness, or death;
- (6) Sets fractures;
- (7) Treats lacerations or abrasions through electrotherapy; or

- (8) Holds out, states, indicates, advertises, or implies to a client or prospective client that the practitioner is a licensed health professional.

**§ -4 Mandatory disclosure.** (a) Prior to providing any treatment, services, or products to any person, a practitioner shall provide, in plain language, a written statement to the person that:

- (1) The practitioner is not a licensed physician or other licensed health care professional, unless the practitioner has a current valid Hawaii license as such;
- (2) That the treatment is an alternative or complementary health care service;
- (3) The nature of the service, product, or treatment to be provided; and
- (4) The practitioner's education, training, experience, or other relevant qualifications regarding the complementary and alternative health care services being provided.

(b) Before starting treatment, the practitioner shall obtain a written acknowledgment from the client that the client received the disclosure as stated in subsection (a). The client shall receive a copy of the disclosure, and the practitioner shall retain the original disclosure on file for two years.

**§ -5 Scope of the chapter.** Nothing in this chapter:

- (1) Shall apply to licensed health care professionals;

- (2) Shall apply to, control, or prevent any health care practice from being practiced if it is already exempt from professional practice acts or state law, or apply to, control, or prevent a person from providing health care services who is already exempt from professional practice acts as defined in or under state law;
- (3) Limits the right of the client receiving service by an alternative or complementary healing modality to seek relief for negligence or any other civil remedy against a practitioner."

SECTION 3. This Act shall take effect upon its approval.

INTRODUCED BY: \_\_\_\_\_