

# HOUSE OF REPRESENTATIVES

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AMENDMENT TO: Senate Bill No. 2213, Senate Draft 2, House Draft 2

CHIEF CLERK'S OFFICE

OFFERED BY: Representative Lynn Finnegan 

HOUSE OF REPRESENTATIVES

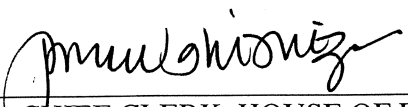
DATE: April 7<sup>th</sup>, 2006

SECTION 1. Senate Bill No. 2213, Senate Draft 2, House Draft 2, is amended by designating Section 1 of the bill as Part I and deleting sections 2 and 3, to read as follows:

"PART I

SECTION 1. Section 663-10.95, Hawaii Revised Statutes, is amended to read as follows:

" [f] §663-10.95 Motorsports facilities; waiver of liability. [f] (a) Any waiver and release, waiver of liability, or indemnity agreement in favor of an owner, lessor, lessee, operator, or promoter of a motorsports facility, which releases or waives any claim by a participant or anyone claiming on behalf of the participant which is signed by the participant in any motorsports or sports event involving motorsports in the State, shall be valid and enforceable against any negligence claim for personal injury of the participant or anyone claiming

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on behalf of and for the participant against the motorsports facility, or the owner, operator, or promoter of a motorsports facility. The waiver and release shall be valid notwithstanding any claim that the participant did not read, understand, or comprehend the waiver and release, waiver of liability, or indemnity agreement if the waiver or release is signed by both the participant and a witness [~~;~~ ~~provided that a~~]. A waiver and release, waiver of liability, or indemnity agreement executed pursuant to this section shall not be enforceable against the rights of any minor [~~or the minor's representative.~~], unless executed in writing by a parent or legal guardian.

(b) The execution of a waiver and release, waiver of liability, or indemnity agreement shall create a presumption that the person signing the document read and understood the document.

~~[(c) For the purposes of this section:~~

~~"Motorsports facility" means land, building, structure, or area designed or modified for motorsports activities including the track and surrounding area wherein a motorsports or other event involving motor vehicles is held and which is clearly demarcated as a restricted area to spectators. "Motorsports facility" shall not include the areas intended for use by spectators or nonparticipants.~~

~~"Owner" means a person or entity which owns or holds fee simple title to, or a leasehold interest in, a motorsports facility or any portion of a motorsports facility, and shall include without limitation, a fee owner or lessor of the underlying land, a lessee, or sublessee, or a sublessor or master lessor, of a motorsports facility or a portion thereof.~~

~~"Participant" means a person who is participating in a motorsports event at a motorsports facility, including practices or trials, as a rider, passenger or driver, official, or owner of a vehicle or equipment used in a motorsports, or anyone assisting any of the foregoing, or a person entering an area of the motorsports facility restricted to participants.]~~

[~~(d)~~] (c) A waiver and release, waiver of liability, or indemnity agreement executed under this section shall be construed as an express assumption of risk on the part of the party executing such a waiver and release, waiver of liability, or indemnity agreement.

[~~(e)~~] (d) This section shall not apply to acts or omissions constituting gross negligence, wilful and wanton conduct, or intentional acts on the part of another participant or employees or agents of the motorsports facility.

[~~(f)~~] (e) The provisions of this section shall not apply to any motorsports facility unless the facility has a general liability policy of no less than \$1,000,000 for spectators and

no less than \$500,000 for participants, per claim, indemnifying participants and spectators for the negligence of the facility, its employees or agents.

(f) Without regard to whether a waiver and release, waiver of liability, or indemnity agreement has been executed pursuant to subsection (a) and without regard to subsection (e), no public entity or public employee shall be liable to a participant, for injury or damage sustained during the person's use of a motorsports facility, except when the injury or damage is caused by a condition resulting from the public entity's failure to design, maintain, or repair the motorsports facility. This limitation of liability for public entities and employees applies only to the provision of motorsports facilities and shall not extend to other activities, including but not limited to police and security, ambulance and medical, fire, food concessions, and other non-motorsports activities or functions.

(g) For the purposes of this section:

"Motorsports facility" means land, building, structure, or area designed or modified for motorsports activities, including the track and surrounding area wherein a motorsports or other event involving motor vehicles is held and which is clearly demarcated as a restricted area to spectators. "Motorsports facility" shall not include the areas intended for use by spectators or nonparticipants.

"Owner" means a person or entity that owns or holds fee simple title to, or a leasehold interest in, a motorsports facility or any portion of a motorsports facility, and shall include without limitation, a fee owner or lessor of the underlying land, a lessee, or sublessee, or a sublessor or master lessor, of a motorsports facility or a portion thereof.

"Participant" means a person who is participating in a motorsports event at a motorsports facility, including practices or trials, as a rider, passenger or driver, official, or owner of a vehicle or equipment used in a motorsports event, or anyone assisting any of the foregoing, or a person entering an area of the motorsports facility restricted to participants."

SECTION 2. Senate Bill No. 2213, Senate Draft 2, House Draft 2, is further amended by adding a new Part II, to read as follows:

"PART II

SECTION 2. Chapter 671, Hawaii Revised Statutes, is amended by adding five new sections to be appropriately designated and to read as follows:

**"§671-A Limitation on noneconomic damages.**

Notwithstanding section 663-8.7, noneconomic damages as defined in section 663-8.5 shall be limited in medical tort actions against obstetricians, obstetrician gynecologists, and trauma care providers, to a maximum award of \$500,000.

§671-B Attorney's fees. (a) An attorney shall not contract for or collect a contingency fee for representing any person seeking damages in connection with an action for a medical tort in excess of the following limits:

- (1) Forty per cent of the first \$50,000 recovered;
- (2) Thirty-three and one-third per cent of the next \$50,000 recovered;
- (3) Twenty-five per cent of the next \$500,000 recovered;  
and
- (4) Fifteen per cent of any amount recovered which exceeds \$600,000.

The limitations shall apply regardless of whether the recovery is by settlement, arbitration, or judgment, or whether the person for whom the recovery is made is a responsible adult, an infant, or a person of unsound mind.

(b) If periodic payments are awarded to the plaintiff pursuant to section 671-E, the court shall place a total value on these payments based upon the projected life expectancy of the plaintiff and include this amount in computing the total award from which attorney's fees are calculated under this section.

(c) For the purposes of this section, "recovered" means the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution or settlement of the

claim. Costs of medical care incurred by the plaintiff and the attorney's office overhead costs or charges are not deductible disbursements or costs for such purpose.

§671-C Assessing percentage of negligence. Upon request of any nonsettling healthcare provider against whom a plaintiff alleges a medical tort-causing injury, the trier of fact shall consider, in assessing any percentage of negligence or other fault, the negligence or other fault of all alleged parties, including the negligence or other fault of any person or entity who has entered into a settlement with the plaintiff for the claimed damages, even when the settlement has been determined to have been made in good faith, pursuant to section 663-15.5.

§671-D Proportionate allocation of economic damages. The amount of economic damages allocated to a healthcare provider in a medical tort action shall be based upon the healthcare provider's proportionate percentage of negligence or other fault.

§671-E Noneconomic damages. (a) If the trier of fact renders a verdict for the plaintiff in a medical tort action, the court shall enter judgment of liability against each defendant healthcare provider in accordance with the percentage of negligence or other fault for compensatory damages that is attributed to the healthcare provider by the trier of fact.

(b) Joint and several liability shall apply if a healthcare provider's degree of negligence is found to be twenty-five per cent or more under section 671-C.

(c) Where a medical care provider's degree of negligence is less than twenty-five per cent, then the amount recoverable against that medical care provider for noneconomic damages shall be in direct proportion to the degree of the negligence assigned.

(d) Judgment shall not be entered against any healthcare provider who has not been named a party or has been released, dismissed, or otherwise discharged as a party pursuant to section 663-15.5."

SECTION 3. Section 663-11, Hawaii Revised Statutes, is amended to read as follows:

**"§663-11 Joint tortfeasors defined.** For the purpose of this part [~~the term~~], "joint tortfeasors" means two or more persons jointly or severally liable in tort for the same injury to person or property, whether or not judgment has been recovered against all or some of them[-], except as provided for healthcare providers in chapter 671."

SECTION 4. Section 671-1, Hawaii Revised Statutes, is amended to read as follows:

**"§671-1 Definitions.** As used in this chapter:



[~~(1)~~] "Health care provider" or "healthcare provider" means a physician or surgeon licensed under chapter 453, a physician and surgeon licensed under chapter 460, a podiatrist licensed under chapter 463E, a health care facility as defined in section 323D-2, a chiropractor licensed under chapter 442, a dentist licensed under chapter 448, a dental hygienist licensed under chapter 447, an acupuncture practitioner licensed under chapter 436E, a massage therapist licensed under chapter 452, a nurse licensed under chapter 457, an occupational therapist licensed under chapter 457G, an optometrist licensed under chapter 459, a pharmacist licensed under chapter 461, a physical therapist licensed under chapter 461J, a psychologist licensed under chapter 465, a marriage and family therapist licensed under chapter 451J, a dietitian licensed under chapter 448B, a radiologic technologist licensed under chapter 466J, a speech pathologist or audiologist licensed under chapter 468E, a veterinarian licensed under chapter 471, and the employees and legal representatives of any of them. Health care provider shall not mean any nursing institution or nursing service conducted by and for those who rely upon treatment by spiritual means through prayer alone, or employees of such institution or service.

[~~(2)~~] "Medical tort" means [~~professional negligence, the rendering of professional service without informed consent, or~~

~~an error or omission in professional practice, by a health care provider, which proximately causes death, injury, or other damage to a patient.]~~ a negligent act or omission to act by a healthcare provider in the rendering of professional services, or the rendering of professional service by a healthcare provider without informed consent, which act or omission or rendering of service without informed consent is the proximate cause of a personal injury or wrongful death; provided that such services are within the scope of services for which the provider is licensed and which are not within any restriction imposed by the licensing agency or licensed hospital."

SECTION 5. The insurance commissioner shall prepare a report to be transmitted to the legislature, at least twenty days prior to the convening of the regular session of 2010, which shall include information regarding:

- (1) The number of medical tort actions filed since this Act took effect;
- (2) The number of medical tort actions filed against obstetricians, obstetrician gynecologists, and trauma care providers since this Act took effect;
- (3) The outcome of these actions; and
- (4) Any other information that may be necessary to assist the legislature in evaluating the efficacy of the Act, including suggested legislation.

SECTION 6. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 7. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 8. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 10. This Act shall take effect on July 1, 2006, provided that Part II shall be repealed on June 30, 2012; and further provided that chapter 671 and section 663-11, Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the effective date of this Act."

**Report Title:**

Motorsports Facilities; Tort Actions; Waiver of Liability; Qualified Immunity; Medical Malpractice insurance; premiums.

**Description:**

Prohibits liability waivers from being enforceable against the rights of a minor who suffers injuries from participating in a motorsports event at a motorsports facility, unless executed in writing by a parent or legal guardian. Provides qualified immunity for public entities and public employees from injuries sustained by a person when using a motorsports facility. Lowers medical malpractice insurance premiums by adopting legislation that directly affects elements impacting medical malpractice insurance rates. (SB2213 HD3)

