
A BILL FOR AN ACT

RELATING TO MEDICAL LIABILITY.

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

1 SECTION 1. Chapter 671, Hawaii Revised Statutes, is
2 amended by adding five new sections to be appropriately
3 designated and to read as follows:

4 "§671- Limitation on noneconomic damages.

5 Notwithstanding section 663-8.7, noneconomic damages as defined
6 in section 663-8.5 shall be limited in medical tort actions to a
7 maximum award of \$250,000; provided that a plaintiff may
8 petition the court for consideration of catastrophic damages.
9 If catastrophic damages are granted then noneconomic damages
10 shall be limited to a maximum award of \$3,000,000. As used in
11 this section, "catastrophic damages" means irreversible, life-
12 altering injuries to an individual such as anoxic brain injury,
13 permanent paralysis, or other conditions as determined by the
14 department of health.

15 §671- Assessing percentage of negligence. Upon request
16 of any nonsettling healthcare provider against whom a plaintiff
17 alleges a medical tort which causes injury, the trier of fact



1 shall consider, in assessing any percentage of negligence or
 2 other fault, the negligence or other fault of all alleged
 3 parties, including the negligence or other fault of any person
 4 or entity who has entered into a settlement with the plaintiff
 5 for the claimed damages, even when the settlement has been
 6 determined to have been made in good faith, pursuant to section
 7 663-15.5.

8 **§671- Economic damages.** (a) A trier of fact may render
 9 a verdict for the plaintiff in a medical tort action that
 10 includes economic damages.

11 (b) For the purposes of this section, "economic damages"
 12 include but are not limited to:

- 13 (1) Past and future medical expenses;
- 14 (2) Loss of past and future earnings;
- 15 (3) Loss of use of property;
- 16 (4) Cost of repair or replacement;
- 17 (5) Cost of obtaining domestic services;
- 18 (6) Loss of employment; and
- 19 (7) Loss of business and employment opportunities.

20 **§671- Proportionate allocation of economic damages.** The
 21 amount of economic damages allocated to a healthcare provider in
 22 a medical tort action shall be based upon the healthcare



1 provider's proportionate percentage of negligence or other
2 fault.

3 §671- Noneconomic damages. (a) If the trier of fact
4 renders a verdict for the plaintiff in a medical tort action,
5 the court shall enter judgment of liability against each
6 defendant healthcare provider in accordance with the percentage
7 of negligence or other fault for compensatory damages that is
8 attributed to the healthcare provider by the trier of fact.

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

13 SECTION 2. Section 663-11, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "**§663-11 Joint tortfeasors defined.** For the purpose of
16 this part, the term "joint tortfeasors" means two or more
17 persons jointly or severally liable in tort for the same injury
18 to person or property, whether or not judgment has been
19 recovered against all or some of them[-], except as provided for
20 healthcare providers in chapter 671."

21 SECTION 3. Section 671-1, Hawaii Revised Statutes, is
22 amended to read as follows:



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

2 [~~(1)~~] "Health care provider" or "healthcare provider" means
3 a physician or surgeon licensed under chapter 453, a physician
4 and surgeon licensed under chapter 460, a podiatrist licensed
5 under chapter 463E, a health care facility as defined in section
6 323D-2, a dentist licensed under chapter 448, an optometrist
7 licensed under chapter 459, a pharmacist licensed under chapter
8 461, a psychologist licensed under chapter 465, and the
9 employees and legal representatives of any of them. Health care
10 provider shall not mean any nursing institution or nursing
11 service conducted by and for those who rely upon treatment by
12 spiritual means through prayer alone, or employees of such
13 institution or service.

14 [~~(2)~~] "Medical tort" means [~~professional negligence, the~~
15 ~~rendering of professional service without informed consent, or~~
16 ~~an error or omission in professional practice, by a health care~~
17 ~~provider, which proximately causes death, injury, or other~~
18 ~~damage to a patient.~~] a negligent act or omission to act by a
19 healthcare provider in rendering professional services, or the
20 provision of professional service by a healthcare provider
21 without informed consent, which act or omission or provision of
22 service without informed consent is the proximate cause of a



1 personal injury or wrongful death; provided that the services
2 are within the scope of services for which the provider is
3 licensed and which are not within any restriction imposed by the
4 licensing agency or licensed hospital."

5 SECTION 4. This Act does not affect rights and duties that
6 matured, penalties that were incurred, and proceedings that were
7 begun, before its effective date.

8 SECTION 5. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 6. This Act shall take effect on July 1, 2008, and
11 shall be repealed on June 30, 2013.



Report Title:

Medical Tort Liability; Noneconomic Damages

Description:

Addresses medical malpractice insurance costs by capping non-economic damages at \$250,000, establishing a limit of \$3,000,000 for noneconomic damages determined by the court to be catastrophic damages, and requiring that economic damages be allocated based upon proportionate percentage of negligence. Sunsets June 30, 2013. (HB1992 HD1)

