
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 a new part to be appropriately designated and
3 to read as follows:

4 **"PART . MEDICAL LIABILITY IN CERTAIN COUNTIES**

5 **§671-A Application of part.** This part shall apply to each
6 county with a population of less than five hundred thousand.

7 **§671-B Definitions.** As used in this part:

8 "Catastrophic damages" means irreversible, life-altering
9 injuries to an individual such as anoxic brain injury, permanent
10 paralysis, or other conditions as determined by the department
11 of health.

12 "Health care provider" means a physician or surgeon
13 licensed under chapter 453, a physician and surgeon licensed
14 under chapter 460, a podiatrist licensed under chapter 463E, a
15 health care facility as defined in section 323D-2, and the
16 employees and legal representatives of any of them. "Health
17 care provider" shall not mean any nursing institution or nursing



1 service conducted by and for those who rely upon treatment by
2 spiritual means through prayer alone, or employees of such
3 institution or service.

4 "Medical tort" means a negligent act or omission to act by
5 a health care provider in rendering professional services, or
6 the provision of professional service by a health care provider
7 without informed consent, which act or omission or provision of
8 service without informed consent is the proximate cause of a
9 personal injury or wrongful death; provided that the services
10 are within the scope of services for which the provider is
11 licensed and which are not within any restriction imposed by the
12 licensing agency or licensed hospital.

13 **§671-C Limitation on noneconomic damages.** (a)

14 Notwithstanding section 663-8.7, noneconomic damages as defined
15 in section 663-8.5 shall be limited in medical tort actions to a
16 maximum award of:

- 17 (1) \$500,000 for high-risk medical specialties as
18 designated by the department of health; and
19 (2) \$250,000 for any medical specialty other than a high-
20 risk medical specialty;

21 provided that a plaintiff may petition the court for
22 consideration of catastrophic damages. If catastrophic damages



1 are granted then noneconomic damages shall be limited to a
2 maximum award of \$3,000,000.

3 **§671-D Assessing percentage of negligence.** Upon request
4 of any nonsettling health care provider against whom a plaintiff
5 alleges a medical tort that has caused injury, the trier of fact
6 shall consider, in assessing any percentage of negligence or
7 other fault, the negligence or other fault of all parties,
8 including the negligence or other fault of any person or entity
9 who has entered into a settlement with the plaintiff for the
10 claimed damages, even when the settlement has been determined to
11 have been made in good faith, pursuant to section 663-15.5.

12 **§671-E Economic damages.** (a) A trier of fact may render
13 a verdict for the plaintiff in a medical tort action that
14 includes economic damages.

15 (b) For the purposes of this section, "economic damages"
16 include:

- 17 (1) Past and future medical expenses;
- 18 (2) Loss of past and future earnings;
- 19 (3) Loss of use of property;
- 20 (4) Cost of repair or replacement;
- 21 (5) Cost of obtaining domestic services;



1 (6) Loss of employment; and

2 (7) Loss of business and employment opportunities.

3 **§671-F Proportionate allocation of economic damages.** The
4 amount of economic damages allocated to a health care provider
5 in a medical tort action shall be based upon the health care
6 provider's proportionate percentage of negligence or other
7 fault.

8 **§671-G Noneconomic damages.** (a) If the trier of fact
9 renders a verdict for the plaintiff in a medical tort action,
10 the court shall enter judgment of liability against each
11 defendant health care provider in accordance with the percentage
12 of negligence or other fault for compensatory damages that is
13 attributed to the health care provider by the trier of fact.

14 (b) Judgment shall not be entered against any health care
15 provider who has not been named a party or has been released,
16 dismissed, or otherwise discharged as a party pursuant to
17 section 663-15.5."

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

20 "**§663-11 Joint tortfeasors defined.** For the purpose of
21 this part, the term "joint tortfeasors" means two or more
22 persons jointly or severally liable in tort for the same injury



1 to person or property, whether or not judgment has been
2 recovered against all or some of them[-], except as provided for
3 health care providers in part of chapter 671."

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

6 "**§671-1 Definitions.** As used in this chapter[+], except
7 as otherwise provided in part :

8 [~~1~~] "Health care provider" means a physician or surgeon
9 licensed under chapter 453, a physician and surgeon licensed
10 under chapter 460, a podiatrist licensed under chapter 463E, a
11 health care facility as defined in section 323D-2, and the
12 employees of any of them. Health care provider shall not mean
13 any nursing institution or nursing service conducted by and for
14 those who rely upon treatment by spiritual means through prayer
15 alone, or employees of such institution or service.

16 [~~2~~] "Medical tort" means professional negligence, the
17 rendering of professional service without informed consent, or
18 an error or omission in professional practice, by a health care
19 provider, which proximately causes death, injury, or other
20 damage to a patient."

21 SECTION 4. By December 31, 2009, the department of health
22 shall adopt rules in accordance with chapter 91 designating the



1 medical specialties that are high-risk for purposes of section
2 671-C in section 1 of this Act. In adopting these rules, the
3 department shall:

- 4 (1) Consult with medical malpractice insurance companies
5 and representatives of medical specialty societies in
6 the state; and
- 7 (2) Determine high-risk medical specialties based on
8 statewide data for each specialty, including data
9 regarding medical tort claims, judgments, awards,
10 settlements, and medical malpractice insurance
11 premiums.

12 SECTION 5. This Act does not affect rights and duties that
13 matured, penalties that were incurred, and proceedings that were
14 begun, before its effective date.

15 SECTION 6. In codifying the new sections added by section
16 1 of this Act, the revisor of statutes shall substitute
17 appropriate section numbers for the letters used in designating
18 the new sections in this Act.

19 SECTION 7. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.

21 SECTION 8. This Act shall take effect on January 1, 2010,
22 and shall be repealed on December 31, 2014; provided that:



- 1 (1) Section 4 shall take effect upon the approval of this
2 Act; and
3 (2) Sections 1, 2, and 3 shall apply to injuries and
4 deaths occurring after the effective date of this Act.



Report Title:

Medical Tort Liability; Noneconomic Damages

Description:

Addresses medical malpractice insurance costs by capping noneconomic damages at \$500,000 for high-risk medical specialties and \$250,000 for all other specialties, 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 December 31, 2014. (HB1992 HD2)

