
A BILL FOR AN ACT

RELATING TO MEDICAL TORTS.

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

1 SECTION 1. The legislature finds that it is necessary to
2 establish special medical tort reform provisions for areas of
3 the State that have a shortage of primary medical care
4 physicians. The legislature further finds that it is necessary
5 in these cases to:

6 (1) Abolish joint and several liability;

7 (2) Permit judgments that provide for periodic payments of
8 awards, in order to ensure that judgments are used for
9 the intended benefit of the injured party;

10 (3) Limit attorney's fees; and

11 (4) Limit noneconomic damages.

12 By authorizing periodic payment judgments, the legislature
13 intends that the courts use these judgments to provide
14 compensation that is sufficient over time to meet the needs of
15 an injured plaintiff and persons who are dependent on the
16 plaintiff. At the same time, the legislature intends the
17 periodic payments to eliminate the potential windfall from a
18 lump-sum recovery in the situation when an injured plaintiff



1 dies shortly after the judgment is paid, leaving the balance of
 2 the judgment award to persons and purposes for which it was not
 3 intended. The legislature further intends that all elements of
 4 the periodic payment program be specified with certainty in the
 5 judgment ordering the payments and that the judgment not be
 6 subject to modification at some future time which might alter
 7 the specifications of the original judgment.

8 The purpose of this Act is to encourage more physicians and
 9 other health care providers to practice in medically underserved
 10 areas of Hawaii.

11 SECTION 2. Chapter 671, Hawaii Revised Statutes, is
 12 amended by adding a new part to be appropriately designated and
 13 to read as follows:

14 **"PART . SPECIAL MEDICAL TORT REFORM**

15 **PROVISIONS FOR HEALTH PROFESSIONAL SHORTAGE AREAS**

16 **§671-A Application.** This part shall apply only to medical
 17 tort actions in which the cause of action arose in a health
 18 professional shortage area within the State.

19 **§671-B Definitions.** For the purpose of this part:

20 "Health professional shortage area" means an area or
 21 medical facility in the State that has been designated a health
 22 professional shortage area for primary medical care by the



1 United States Department of Health and Human Services, Health
2 Resources and Services Administration.

3 "Joint tortfeasor" means the same as defined in section
4 663-11.

5 **§671-C Abolition of joint and several liability.** (a)

6 Joint and several liability for health care providers that are
7 joint tortfeasors in a medical tort is abolished.

8 (b) Any party subject to subsection (a) shall be liable
9 for:

10 (1) That party's share of any damages only and not for the
11 share of any other person; and

12 (2) The amount of damages allocated to that party in
13 direct proportion to that party's percentage of
14 liability.

15 (c) A separate judgment shall be rendered against each
16 party subject to subsection (a) for the amount allocated to that
17 party. For the purposes of this section, the trier of fact
18 shall determine the proportion of liability of each party for
19 the claimant's death, injury, or other damage.

20 (d) The trier of fact also shall determine the proportion
21 of liability and amount allocated to a party who is not subject
22 to subsection (a).



1 **§671-D Periodic payments.** (a) As used in this section:

2 "Future damages" includes damages for future medical
3 treatment, care or custody, loss of future earnings, loss of
4 bodily function, or future pain and suffering of the judgment
5 creditor.

6 "Periodic payments" means the payment of money or delivery
7 of other property by the judgment debtor to the judgment
8 creditor at regular intervals.

9 (b) In any medical tort action, a court, at the request of
10 either party, shall enter a judgment ordering that money damages
11 or the equivalent for future damages of the judgment creditor be
12 paid, in whole or in part, by periodic payments rather than by a
13 lump-sum payment if the award equals or exceeds \$50,000 in
14 future damages. In entering a judgment ordering the payment of
15 future damages by periodic payments, the court shall make a
16 specific finding as to the dollar amount of periodic payments
17 that compensates the judgment creditor for future damages. As a
18 condition to authorizing periodic payments of future damages,
19 the court shall require a judgment debtor who is not adequately
20 insured to post security adequate to ensure full payment of
21 damages awarded by the judgment. Upon termination of periodic



1 payments of future damages, the court shall order the return of
2 this security or so much as remains to the judgment debtor.

3 (c) The judgment ordering the payment of future damages by
4 periodic payments shall specify:

- 5 (1) The recipient or recipients of the payments;
- 6 (2) The dollar amount of the payments;
- 7 (3) The interval between payments; and
- 8 (4) The number of payments or the period of time over
9 which payments shall be made.

10 Periodic payments shall only be subject to modification in the
11 event of the death of the judgment creditor as provided under
12 subsection (e).

13 (d) In the event that the court finds that the judgment
14 debtor has exhibited a continuing pattern of failing to make
15 periodic payments, the court shall find the judgment debtor in
16 contempt of court and shall order the judgment debtor to pay to
17 the judgment creditor any delinquent periodic payments and all
18 damages caused by the failure to make periodic payments,
19 including court costs and attorney's fees.

20 (e) Money damages awarded for loss of future earnings
21 shall not be reduced or payments terminated by reason of the
22 death of the judgment creditor, but shall be paid to persons to



1 whom the judgment creditor owed a duty of support, as provided
2 by law, immediately prior to the judgment creditor's death.
3 Upon petition by any party in interest, the court that rendered
4 the original judgment may modify the judgment to award and
5 apportion the unpaid future damages in accordance with this
6 subsection.

7 (f) Upon the satisfaction or expiration of all obligation
8 specified in the periodic payment judgment, any obligation of
9 the judgment debtor to make further payments shall cease, and
10 any security given pursuant to subsection (b) shall revert to
11 the judgment debtor.

12 **§671-E Attorney's fees.** An attorney shall not contract
13 for or collect a contingency fee for representing a party
14 seeking damages in connection with an action for a medical tort
15 in excess of the following limits:

- 16 (1) Forty per cent of the first \$50,000 recovered;
17 (2) Thirty-three and one-third per cent of the next
18 \$50,000 recovered;
19 (3) Twenty-five per cent of the next \$500,000 recovered;
20 and
21 (4) Fifteen per cent of any amount by which the recovery
22 exceeds \$600,000.



1 These limitations shall apply regardless of whether the recovery
2 is by settlement, arbitration, or judgment or whether the
3 injured party on whose behalf the recovery is made is a
4 responsible adult, an infant, or a person of unsound mind.

5 As used in this section, "recovered" means the net sum
6 recovered by the injured party after deducting any disbursements
7 or costs incurred in connection with prosecution or settlement
8 of the claim. Costs of medical care incurred by the plaintiff
9 and attorney's office overhead costs or charges are not
10 deductible disbursements or costs for the purposes of this
11 section.

12 **§671-F Limitation on noneconomic damages.** Notwithstanding
13 section 663-8.7, noneconomic damages as defined in section 663-
14 8.5 shall be limited in medical tort actions to a maximum award
15 of \$250,000."

16 SECTION 3. This Act does not affect rights and duties that
17 matured, penalties that were incurred, and proceedings that were
18 begun, before its effective date.

19 SECTION 4. In codifying the new sections added by section
20 2 of this Act, the revisor of statutes shall substitute
21 appropriate section numbers for the letters used in designating
22 the new sections in this Act.



1 SECTION 5. This Act shall take effect on July 1, 2008.

2

INTRODUCED BY:

Calvin K. Boy

BY REQUEST

JAN 15 2008



Report Title:

Medical Torts

Description:

Establishes special medical tort reform provisions for health professional shortage areas.

