

# H .B. NO. 3048

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## A BILL FOR AN ACT

RELATING TO GOVERNMENT TORT LIABILITY.

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

1           SECTION 1. The purpose of this Act is to amend section  
2 663-10.5, Hawaii Revised Statutes, to abolish joint and several  
3 liability for government entities in all cases under chapter  
4 663, Hawaii Revised Statutes, so that government entities would  
5 only be liable for the percentage share of the damages actually  
6 attributable to the government entities.

7           This Act also amends section 663-10.9(4), Hawaii Revised  
8 Statutes, to define what constitutes a "prior occurrence under  
9 similar circumstances" to show that an affected joint tortfeasor  
10 had reasonable prior notice that would allow recovery of  
11 noneconomic damages and to prohibit recovery in instances where  
12 there has been no reasonable prior notice.

13           SECTION 2. Section 663-10.5, Hawaii Revised Statutes, is  
14 amended to read as follows:

15           "**§663-10.5 Government entity as a tortfeasor; abolition of**  
16 **joint and several liability.** Any other law to the contrary  
17 notwithstanding, including but not limited to sections 663-10.9,  
18 663-11 to 663-13, 663-16, 663-17, and 663-31, in any case where

1 a government entity is determined to be a tortfeasor along with  
2 one or more other tortfeasors, the government entity shall be  
3 liable for no more than that percentage share of the damages  
4 attributable to the government entity[~~; provided that joint and~~  
5 ~~several liability shall be retained for tort claims relating to~~  
6 ~~the maintenance and design of highways pursuant to section 663-~~  
7 ~~10.9].~~

8 For purposes of this section, "government entity" means any  
9 unit of government in this State, including the State and any  
10 county or combination of counties, department, agency,  
11 institution, board, commission, district, council, bureau,  
12 office, governing authority, or other instrumentality of state  
13 or county government, or corporation or other establishment  
14 owned, operated, or managed by or on behalf of this State or any  
15 county.

16 For purposes of this section, the liability of a government  
17 entity shall include its vicarious liability for the acts or  
18 omissions of its officers and employees."

19 SECTION 3. Section 663-10.9, Hawaii Revised Statutes, is  
20 amended to read as follows:

21 " §663-10.9 Abolition of joint and several liability;  
22 exceptions. Joint and several liability for joint tortfeasors

1 as defined in section 663-11 is abolished except in the  
2 following circumstances:

3 (1) For the recovery of economic damages against joint  
4 tortfeasors in actions involving injury or death to  
5 persons;

6 (2) For the recovery of economic and noneconomic damages  
7 against joint tortfeasors in actions involving:

8 (A) Intentional torts;

9 (B) Torts relating to environmental pollution;

10 (C) Toxic and asbestos-related torts;

11 (D) Torts relating to aircraft accidents;

12 (E) Strict and products liability torts; or

13 (F) Torts relating to motor vehicle accidents except  
14 as provided in paragraph (4);

15 (3) For the recovery of noneconomic damages in actions,  
16 other than those enumerated in paragraph (2),  
17 involving injury or death to persons against those  
18 tortfeasors whose individual degree of negligence is  
19 found to be twenty-five per cent or more under section  
20 663-31. Where a tortfeasor's degree of negligence is  
21 less than twenty-five per cent, then the amount  
22 recoverable against that tortfeasor for noneconomic

1 damages shall be in direct proportion to the degree of  
2 negligence assigned; and  
3 (4) For recovery of noneconomic damages in motor vehicle  
4 accidents involving tort actions relating to the  
5 maintenance and design of highways including actions  
6 involving guardrails, utility poles, street and  
7 directional signs, and any other highway-related  
8 device upon a showing that the affected joint  
9 tortfeasor was given reasonable prior notice of a  
10 prior occurrence under similar circumstances to the  
11 occurrence upon which the tort claim is based. [~~In~~  
12 ~~actions in which the affected joint tortfeasor has not~~  
13 ~~been shown to have had such reasonable prior notice,~~  
14 ~~the recovery of noneconomic damages shall be as~~  
15 ~~provided in paragraph (3).]~~ For purposes of this  
16 paragraph, "similar circumstances" means: (A) at the  
17 same location; (B) involving the same highway-related  
18 device or condition alleged to have caused the  
19 occurrence; and (C) the condition of the roadway at  
20 the time of the prior occurrence is in a substantially  
21 similar condition as at the time of the occurrence  
22 upon which the tort claim is based.

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1 (5) Provided, however, that joint and several liability  
2 for economic and noneconomic damages for claims  
3 against design professionals, as defined in chapter  
4 672, and certified public accountants, as defined in  
5 chapter 466, is abolished in actions not involving  
6 physical injury or death to persons."

7 SECTION 4. Statutory material to be repealed is bracketed  
8 and stricken. New statutory material is underscored.

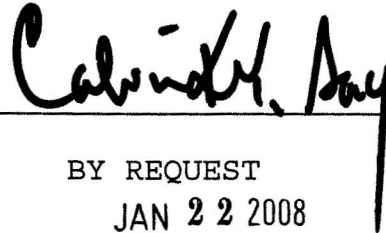
9 SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY:

  
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BY REQUEST  
JAN 22 2008

**Report Title:**

GOVERNMENT TORT LIABILITY.

**Description:**

Clarifies that government entities are only liable in certain cases for the percentage share of the damages they actually caused; changes definition of "similar circumstances" concerning joint liability in certain motor vehicle accidents.

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO GOVERNMENT TORT LIABILITY.

PURPOSE: To abolish joint and several liability for government entities in all cases under chapter 663, Hawaii Revised Statutes, by eliminating the retention of joint and several liability for tort claims against government entities relating to the maintenance and design of highways pursuant to section 663-10.9, Hawaii Revised Statutes, making government entities only responsible for their proportionate share of damages in all cases.

This bill also amends section 663-10.9(4) to define, in tort actions relating to the maintenance and design of highways, what constitutes a "prior occurrence under similar circumstances" in order to find that the affected joint tortfeasor was given reasonable prior notice that would allow recovery of noneconomic damages. This bill also would prohibit recovery in instances where there has been no reasonable prior notice of a prior occurrence under similar circumstances.

MEANS: Amend sections 663-10.5 and 663-10.9, Hawaii Revised Statutes.

JUSTIFICATION: Section 663-10.5 was intended to protect the public fisc by preventing government entities from being held jointly and severally liable for the entire damages in cases in which the government entities bore minimal responsibility in causing those damages. Section 663-10.5 abolished joint and several liability for government entities and provided that

government entities would be liable for no more than that percentage share of the damages attributable to the government entities. In 2006, this statute was amended to retain joint and several liability for government entities for tort claims relating to the maintenance and design of highways pursuant to section 663-10.9.

This exception would be an unfair burden to the State's taxpayers and goes against the original intent of section 663-10.5 which was to "ensure fairness and equity for government entities who, because of their 'deep pockets' may be otherwise required to pay more than their fair share when determined to be a joint tortfeasor." Conf. Comm. Rep. No. 48 on H.B. No. 1088, 1994 Regular Session.

Section 663-10.9(4) currently allows for recovery of noneconomic damages in motor vehicle accident tort claims relating to the maintenance and design of highways upon a showing that the affected joint tortfeasor was given reasonable prior notice of a prior occurrence under similar circumstances. However, the existence of just one prior accident would not necessarily be an accurate, fair, or even relevant indicator of reasonable prior notice since what constitutes "similar circumstances" would be open to varying interpretation and inconsistent application. By including a definition of "similar circumstances," the parties, the courts and the triers of fact will have clear direction as to when joint and several liability will apply and when noneconomic damages can be recovered in motor vehicle accidents.

Section 663-10.9(4) currently also provides for the recovery of noneconomic damages even without a showing of reasonable prior notice or a prior



tortfeasor who has no prior notice of a particular hazard but otherwise fulfills its duty to properly design and maintain its highways should not be held liable for unforeseen accidents that may occur.

Impact on the public: This bill will ensure that the State and its taxpayers are not overburdened with paying excessive damages for highway-related injuries where the majority of fault is with another tortfeasor and the State has minimal responsibility and where it had no reasonable prior notice of prior similar accidents.

Impact on the department and other agencies: This bill will protect the general fund from excessive judgments for tort claims against the State relating to highway maintenance and design where there have been no prior notice of prior similar accidents and by making the State responsible only for its proportionate share of damages when the State has minimal responsibility for tort claims relating to highway maintenance and design.

GENERAL FUND:	None.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	None.
OTHER AFFECTED AGENCIES:	Judiciary.
EFFECTIVE DATE:	Upon approval.