
A BILL FOR AN ACT

RELATING TO TORTS.

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

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

4 "§671-A Limitation on noneconomic damages. Noneconomic
5 damages as defined in section 663-8.5 shall be limited in
6 medical tort actions against obstetricians, obstetrician
7 gynecologists, and trauma care providers, to a maximum award of
8 \$500,000.

9 §671-B Assessing percentage of negligence. Upon request
10 of any nonsettling healthcare provider against whom a plaintiff
11 alleges a medical tort causing injury, the trier of fact shall
12 consider, in assessing any percentage of negligence or other
13 fault, the negligence or other fault of all alleged parties,
14 including the negligence or other fault of any person or entity
15 who has entered into a settlement with the plaintiff for the
16 claimed damages, even when the settlement has been determined to
17 have been made in good faith, pursuant to section 663-15.5.



1 §671-C Proportionate allocation of economic damages. The
2 amount of economic damages allocated to a healthcare provider in
3 a medical tort action shall be based upon the healthcare
4 provider's proportionate percentage of negligence or other
5 fault.

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

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

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

21 (d) Judgment shall not be entered against any healthcare
22 provider who has not been named a party or has been released,



1 dismissed, or otherwise discharged as a party pursuant to
2 section 663-15.5."

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

5 "§663-11 **Joint tortfeasors defined.** For the purpose of
6 this part [~~the term~~], "joint tortfeasors" means two or more
7 persons jointly or severally liable in tort for the same injury
8 to person or property, whether or not judgment has been
9 recovered against all or some of them[-], except as provided for
10 healthcare providers in chapter 671."

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

13 "§671-1 **Definitions.** As used in this chapter:

14 [~~1~~] "Health care provider" or "healthcare provider"
15 means a physician or surgeon licensed under chapter 453, a
16 physician and surgeon licensed under chapter 460, a podiatrist
17 licensed under chapter 463E, a health care facility as defined
18 in section 323D-2, a chiropractor licensed under chapter 442, a
19 dentist licensed under chapter 448, a dental hygienist licensed
20 under chapter 447, an acupuncture practitioner licensed under
21 chapter 436E, a massage therapist licensed under chapter 452, a
22 nurse licensed under chapter 457, an occupational therapist



1 registered under chapter 457G, an optometrist licensed under
2 chapter 459, a pharmacist licensed under chapter 461, a physical
3 therapist licensed under chapter 461J, a psychologist licensed
4 under chapter 465, a marriage and family therapist licensed
5 under chapter 451J, a dietitian licensed under chapter 448B, a
6 radiologic technologist licensed under chapter 466J, a speech
7 pathologist or audiologist licensed under chapter 468E, a
8 veterinarian licensed under chapter 471, and the employees and
9 legal representatives of any of them. Health care provider
10 shall not mean any nursing institution or nursing service
11 conducted by and for those who rely upon treatment by spiritual
12 means through prayer alone, or employees of such institution or
13 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 the rendering of professional services,
20 or the rendering of professional service by a healthcare
21 provider without informed consent, which act or omission or
22 rendering of service without informed consent is the proximate



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

5 SECTION 4. The insurance commissioner shall prepare a
6 report to be transmitted to the legislature, at least twenty
7 days prior to the convening of the regular session of 2011,
8 which shall include information regarding:

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

18 SECTION 5. This Act does not affect rights and duties that
19 matured, penalties that were incurred, and proceedings that were
20 begun, before its effective date.

21 SECTION 6. In codifying the new sections added by section
22 1 of this Act, the revisor of statutes shall substitute



1 appropriate section numbers for the letters used in designating
2 the new sections in this Act.

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

5 SECTION 8. This Act shall take effect on July 1, 2008, and
6 shall be repealed on July 1, 2011; provided that chapter 671 and
7 section 663-11, Hawaii Revised Statutes, shall be reenacted in
8 the form in which they read on the day before the effective date
9 of this Act.

10

INTRODUCED BY: John Green

JAN 23 2008



Report Title:

Medical Malpractice

Description:

Reforms the healthcare liability system for resolving healthcare liability claims and for compensating injured patients.

