

JAN 18 2008

A BILL FOR AN ACT

RELATING TO MEDICAL LIABILITY.

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

1 SECTION 1. The legislature finds that sound public policy
2 and legislation is needed to address the high cost of medical
3 malpractice insurance premiums and the impact these high costs
4 have on the ability to attract and retain a quality healthcare
5 workforce.

6 The purpose of this Act is to effectuate the
7 recommendations of the Maui Health Initiative Task Force
8 established pursuant to Act 219, Session Laws of Hawaii 2007,
9 by:

- 10 (1) Limiting noneconomic damages that may be recovered in
11 medical tort actions;
- 12 (2) Limiting the amount of attorney's fees that may be
13 collected in connection with a medical tort action;
- 14 and
- 15 (3) Amending the definition of "health care provider" and
16 "medical tort".



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

4 **"§671- Limitation on noneconomic damages.**

5 Notwithstanding any law to the contrary, noneconomic damages, as
6 defined in section 663-8.5, shall be limited in medical tort
7 actions against a health care provider to a maximum award of
8 \$_____.

9 **§671- Attorney's fees.** (a) An attorney shall not
10 contract for or collect a contingency fee for representing any
11 person seeking damages in connection with an action for a
12 medical tort in excess of the following limits:

13 (1) _____ per cent of the first \$_____ recovered;

14 (2) _____ per cent of the next \$_____ recovered;

15 (3) _____ per cent of the next \$_____ recovered; and

16 (4) _____ per cent of any amount recovered that exceeds
17 \$_____.

18 The limitations shall apply regardless of whether the
19 recovery is by settlement, arbitration, or judgment, or whether
20 the person for whom the recovery is made is a responsible adult,
21 an infant, or a person of unsound mind.



1 (b) If periodic payments are awarded to the plaintiff, the
2 court shall place a total value on these payments based upon the
3 projected life expectancy of the plaintiff and include this
4 amount in computing the total award from which attorney's fees
5 are calculated under this section.

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

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

14 **"§671-1 Definitions.** As used in this chapter:

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



1 licensed under chapter 457, an occupational therapist licensed
2 under chapter 457G, an optometrist licensed under chapter 459, a
3 pharmacist licensed under chapter 461, a physical therapist
4 licensed under chapter 461J, a psychologist licensed under
5 chapter 465, a marriage and family therapist licensed under
6 chapter 451J, a dietitian licensed under chapter 448B, a
7 radiologic technologist licensed under chapter 466J, a speech
8 pathologist or audiologist licensed under chapter 468E, a
9 veterinarian licensed under chapter 471, and the employees and
10 legal representatives of any of them. Health care provider
11 shall not mean any nursing institution or nursing service
12 conducted by and for those who rely upon treatment by spiritual
13 means through prayer alone, or employees of such institution or
14 service.

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



1 rendering of service without informed consent is the proximate
 2 cause of a personal injury or wrongful death; provided that such
 3 services are within the scope of services for which the provider
 4 is licensed and are not within any restriction imposed by the
 5 licensing agency or licensed hospital."

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

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

11 SECTION 6. This Act shall take effect on July 1, 2008.

12

INTRODUCED BY: 23.TZ.

J. Alan English
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Report Title:

Medical Tort Liability; Noneconomic Damages

Description:

Limits noneconomic damages that may be recovered in medical tort actions. Limits the amount of attorney's fees that may be collected in connection with a medical tort action.

