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# A BILL FOR AN ACT

RELATING TO CIVIL ACTIONS.

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

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

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

8           "**§663-10.5 Government entity as a tortfeasor; abolition of**  
9 **joint and several liability.** Any other law to the contrary  
10 notwithstanding, including but not limited to sections 663-10.9,  
11 663-11 to 663-13, 663-16, 663-17, and 663-31, in any case where  
12 a government entity is determined to be a tortfeasor along with  
13 one or more other tortfeasors, the government entity shall be  
14 liable for no more than that percentage share of the damages  
15 attributable to the government entity[~~; provided that joint and~~  
16 ~~several liability shall be retained for tort claims relating to~~



1 ~~the maintenance and design of highways pursuant to section 663-~~  
2 ~~10.9].~~

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

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

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

16 **"§663-10.9 Abolition of joint and several liability;**  
17 **exceptions.** Joint and several liability for joint tortfeasors  
18 as defined in section 663-11 is abolished except in the  
19 following circumstances:

20 (1) For the recovery of economic damages against joint  
21 tortfeasors in actions involving injury or death to  
22 persons;



- 1           (2) For the recovery of economic and noneconomic damages  
2           against joint tortfeasors in actions involving:  
3           (A) Intentional torts;  
4           (B) Torts relating to environmental pollution;  
5           (C) Toxic and asbestos-related torts;  
6           (D) Torts relating to aircraft accidents;  
7           (E) Strict and products liability torts; or  
8           (F) Torts relating to motor vehicle accidents [~~except~~  
9           as provided in paragraph (4)]; and
- 10          (3) For the recovery of noneconomic damages in actions,  
11          other than those enumerated in paragraph (2),  
12          involving injury or death to persons against those  
13          tortfeasors whose individual degree of negligence is  
14          found to be twenty-five per cent or more under section  
15          663-31. Where a tortfeasor's degree of negligence is  
16          less than twenty-five per cent, then the amount  
17          recoverable against that tortfeasor for noneconomic  
18          damages shall be in direct proportion to the degree of  
19          negligence assigned~~[, and~~
- 20          ~~(4) For recovery of noneconomic damages in motor vehicle~~  
21          ~~accidents involving tort actions relating to the~~  
22          ~~maintenance and design of highways including actions~~



1           ~~involving guardrails, utility poles, street and~~  
2           ~~directional signs, and any other highway-related~~  
3           ~~device upon a showing that the affected joint~~  
4           ~~tortfeasor was given reasonable prior notice of a~~  
5           ~~prior occurrence under similar circumstances to the~~  
6           ~~occurrence upon which the tort claim is based. In~~  
7           ~~actions in which the affected joint tortfeasor has not~~  
8           ~~been shown to have had such reasonable prior notice,~~  
9           ~~the recovery of noneconomic damages shall be as~~  
10          ~~provided in paragraph (3)].~~

11          ~~[(5) Provided, however, that joint]~~ Joint and several  
12          liability for economic and noneconomic damages for claims  
13          against design professionals, as defined in chapter ~~[672,]~~ 672B,  
14          and certified public accountants, as defined in chapter 466, is  
15          abolished in actions not involving physical injury or death to  
16          persons."

17          SECTION 4. If any provision of this Act, or the  
18          application thereof to any person or circumstance is held  
19          invalid, the invalidity does not affect other provisions or  
20          applications of the Act that can be given effect without the  
21          invalid provision or application, and to this end the provisions  
22          of this Act are severable.



1           SECTION 5. This Act does not affect rights and duties that  
2 matured, penalties that were incurred, and proceedings that were  
3 begun before its effective date.

4           SECTION 6. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6           SECTION 7. This Act shall take effect on July 1, 2020.



**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. (HB1037 HD2)

