
A BILL FOR AN ACT

RELATING TO TORTS.

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

1 SECTION 1. The legislature finds that Hawaii's design
2 professional firms engaged in work on highway projects are in a
3 unique position compared to others involved in highway projects.
4 The role of design professionals is minimal in scope, time, and
5 economic benefit. The scope of the design professional's work
6 is limited to the initial design of the highway, which is
7 minimal in contrast to the construction and maintenance of
8 highways. The time that design professionals are involved is
9 also minimal and usually limited to the initial planning stage
10 of the project. On the other hand, highway construction
11 typically takes years and maintenance extends over many decades.
12 Design professionals generally have no control over subsequent
13 construction and future maintenance activities that occur long
14 after their work has ended. Construction and maintenance costs
15 similarly greatly exceed design costs. For virtually all small
16 design firms, the liability risk far exceeds the financial
17 compensation for highway projects. This Act recognizes these
18 unique factors and affords appropriate relief.



1 SECTION 2. Chapter 663, Hawaii Revised Statutes, is amended
2 by adding a new section to be appropriately designated and to
3 read as follows:

4 **"§663- Design professional liability; highways. (a)**
5 Any other law to the contrary notwithstanding, including but not
6 limited to sections 663-10.9, 663-11 to 663-13, 663-16, 663-17,
7 and 663-31, in any case involving tort claims relating to the
8 design, construction, and maintenance of highways, where a
9 design professional is determined to be a joint tortfeasor along
10 with one or more other joint tortfeasors, and the degree of
11 negligence of the design professional is ten per cent or less,
12 including the vicarious liability of the design professional for
13 the negligent acts or omissions of the officers and employees of
14 the design professional, the liability of the design
15 professional for more than the design professional's pro rata
16 share of negligence shall not exceed the available policy limits
17 of the design professional's professional liability coverage;
18 provided that one of the following applies:

19 (1) The contract amount for design professional services
20 relating to the tort claim is \$500,000 or less and the
21 design professional is covered for the claim by a
22 professional liability insurance policy with limits of



1 no less than \$1,000,000 per occurrence and \$1,000,000
2 in the aggregate; or

3 (2) The contract amount for design professional services
4 relating to the tort claim is \$1,000,000 or less and
5 the design professional is covered for the claim by a
6 professional liability insurance policy with limits of
7 no less than \$1,000,000 per occurrence and \$2,000,000
8 in the aggregate.

9 (b) This section shall not apply to any design
10 professional with a gross annual revenue of \$10,000,000 or more
11 during any of the three calendar years immediately preceding the
12 effective date of the contract for design professional services
13 relating to the tort claim. Information produced pursuant to
14 this section relating to gross revenue shall be confidential and
15 used only for purposes of this section unless otherwise ordered
16 by the court.

17 (c) For purposes of this section:

18 "Available policy limits" means the remaining occurrence or
19 aggregate policy limits available after reduction for prior
20 claim payments made under the applicable professional liability
21 insurance policy.



1 "Contract amount" means the maximum charges permitted under
2 the contract; provided that if two or more design professional
3 firms share in a contract, the contract amount shall be the
4 share of maximum charges permitted for the design professional
5 against which the claim is asserted.

6 "Design professional" means a professional engineer,
7 architect, surveyor, or landscape architect licensed under
8 chapter 464."

9 SECTION 3. This Act shall apply prospectively only and
10 shall not affect events, acts, or omissions that occur, rights
11 that vest or mature, or proceedings begun, before its effective
12 date.

13 SECTION 4. New statutory material is underscored.

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



H.B. NO. 1316
H.D. 2
S.D. 1
C.D. 1

Report Title:

Joint Tortfeasors; Design Professionals

Description:

Clarifies the joint and several liability for design professionals in tort claims relating to the design, construction, and maintenance of public highways. (HB1316 CD1)

HB1316 CD1 HMS 2009-4007

