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# A BILL FOR AN ACT

RELATING TO MEDICAL TORTS.

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

1 PART I

2 SECTION 1. Section 671-16, Hawaii Revised Statutes, is  
3 amended to read as follows:

4 "**§671-16 Subsequent litigation; costs and fees; excluded**  
5 **evidence.** (a) The claimant may institute litigation based upon  
6 the claim in an appropriate court only after a party to a  
7 medical claim conciliation panel hearing rejects the decision of  
8 the panel, or after the twelve-month period under section 671-18  
9 has expired.

10 (b) In cases where the claimant rejects damages awarded by  
11 the panel and institutes litigation, the claimant shall be  
12 liable for the health care provider's attorneys' fees and costs  
13 and the provider's time in preparing for and attending any court  
14 hearings, unless the litigation results in an award of more than  
15 two hundred per cent of the damages awarded by the medical claim  
16 conciliation panel.

17 (c) In cases where the claimant rejects the panel's  
18 finding that the health care provider was not negligent and



1 institutes litigation, the claimant shall be liable for the  
2 attorneys' fees and costs of all defendants to the action,  
3 unless the litigation results in a judgment in favor of the  
4 claimant.

5 (d) No statement made in the course of the hearing of the  
6 medical claim conciliation panel shall be admissible in evidence  
7 either as an admission, to impeach the credibility of a witness,  
8 or for any other purpose in any trial of the action; provided  
9 that such statements may be admissible for the purpose of  
10 section 671-19, hereof. No decision, conclusion, finding, or  
11 recommendation of the medical claim conciliation panel on the  
12 issue of liability or on the issue of damages shall be admitted  
13 into evidence in any subsequent trial, nor shall any party to  
14 the medical claim conciliation panel hearing, or the counsel or  
15 other representative of such party, refer or comment thereon in  
16 an opening statement, an argument, or at any other time, to the  
17 court or jury; provided that such decision, conclusion, finding,  
18 or recommendation may be admissible for the purpose of section  
19 671-19, hereof."



## 1 PART II

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

## 5 "PART . MEDICAL CLAIM CONCILIATION

6 **§671-A Medical claim conciliation office.** (a) There is  
7 established in the department of commerce and consumer affairs  
8 for administrative purposes a medical claim conciliation office  
9 that shall conduct administrative hearings and issue binding  
10 opinions in medical tort claims against health care providers.

11 (b) The office shall be headed by an executive director  
12 who shall be appointed by the director of commerce and consumer  
13 affairs and shall be exempt from chapter 76 and 89. The  
14 executive director shall serve in a full time capacity and shall  
15 perform such duties and exercise such powers and authority as  
16 may be delegated to the executive director by the director of  
17 commerce and consumer affairs.

18 (c) There shall be a medical claim conciliation hearing  
19 officer who shall handle proceedings and hold hearings on  
20 medical claims. The hearing officer shall be appointed by the  
21 director of commerce and consumer affairs and exempt from  
22 chapter 76 and 89. The director shall develop the



1 qualifications for the hearing officer and shall include  
2 training in administrative hearings and legal proceedings and  
3 training in the medical field that shall include but not be  
4 limited to in-classroom clinical training and a program in which  
5 the hearing officer shadows physicians in different health care  
6 settings.

7 (d) The office and administrative hearing space,  
8 secretarial and clerical assistance, office equipment, and  
9 office supplies for the medical claim conciliation office shall  
10 be furnished by the department.

11 (e) The director shall adopt rules pursuant to chapter 91  
12 to establish the procedures governing the administrative hearing  
13 process for medical claims.

14 **§671-B Medical claims; filing fee.** (a) For each claim  
15 filed pursuant to this part, the claimant shall pay a filing fee  
16 to the department, the amount of which shall be established by  
17 the executive director. Failure to pay the filing fee shall  
18 result in the claim being rejected for filing unless it is  
19 accompanied by a motion made pursuant to subsection (b). Each  
20 health care provider and other parties to the claim shall pay a  
21 filing fee of \$450 to the department within twenty days of being



1 served with the claim. Filing fees shall be non-refundable and  
2 shall be deposited into the compliance resolution fund.

3 (b) If any party to a claim cannot pay the required filing  
4 fee, the party may file with the executive director a motion to  
5 waive the filing fee. The motion to waive the filing fee shall  
6 be accompanied by an affidavit in the format prescribed by the  
7 department, showing in detail:

8 (1) The party's inability to pay the filing fee;

9 (2) The party's belief that the party is entitled to  
10 redress; and

11 (3) A statement of the issues that the party intends to  
12 present at the hearing before the medical claims  
13 hearing officer.

14 (c) The filing of a motion to waive the filing fee shall  
15 toll the time limitation in section 671-C. The executive  
16 director shall decide the motion to waive the filing fee as  
17 expeditiously as possible and no oral arguments shall be  
18 permitted.

19 (d) If the executive director grants the motion to waive  
20 the filing fee the claim shall proceed. If the motion is denied  
21 the executive director shall state the reason for the denial in



1 writing. The executive director shall promptly provide a copy  
2 of the order granting or denying the motion to the claimant.

3 (e) If a motion to waive the filing fee is denied by the  
4 executive director, the party may seek judicial review under  
5 section 91-14.

6 (f) If the executive director denies a party's motion to  
7 waive the filing fee, the party shall pay the filing fee within  
8 thirty days after denial of the motion, unless the party has  
9 filed an appeal under section 91-14. If the party has filed an  
10 appeal under section 91-14, the party may proceed without  
11 payment of the filing fee until a final judicial determination  
12 is rendered on the appeal.

13 (g) If the party files an appeal under section 91-14 and  
14 the court upholds the executive director's denial of the party's  
15 motion to waive the filing fee, the party shall pay the filing  
16 fee within thirty days after the court's affirmation of the  
17 denial. If the court determines that the party's motion for  
18 waiver of the filing fee was improperly denied, the party shall  
19 be allowed to proceed without payment of the filing fee.

20 **§671-C Limitation of actions; time.** (a) No claim for  
21 injury or death against a health care provider that is based  
22 upon the provider's alleged professional negligence, or for



1 rendering professional services without consent, or for an error  
2 or omission in the provider's practice shall be brought more  
3 than two years after the claimant discovers, or through the use  
4 of reasonable diligence should have discovered, the injury, but  
5 in any event not more than six years after the date of the  
6 alleged act or omission causing the injury or death. The six-  
7 year time limitation shall be tolled for any period during which  
8 the person has failed to disclose any act, error, or omission  
9 upon which the action is based and which is known to the person.

10 (b) Actions by a minor shall be commenced within six years  
11 from the date of the alleged wrongful act except that actions by  
12 a minor under the age of ten years shall be commenced within six  
13 years or by the minor's tenth birthday, whichever provides a  
14 longer period. The time limitation shall be tolled for any  
15 minor for any period during which the parent, guardian, insurer,  
16 or health care provider has committed fraud or gross negligence,  
17 or has been a party to a collusion in the failure to bring  
18 action on behalf of the injured minor for a medical tort. The  
19 time limitation shall also be tolled for any period during which  
20 the minor's injury or illness alleged to have arising, in whole  
21 or in part, from the alleged wrongful act or omission could not  
22 have been discovered through the use of reasonable diligence.



1           **§671-D Medical claim conciliation hearing.** Except as  
2 otherwise provided in this part, medical claim conciliation  
3 hearings shall be conducted in accordance with chapter 91.

4           **§671-E Annual report.** The director of commerce and  
5 consumer affairs shall prepare and submit to the legislature  
6 annually, twenty days prior to the convening of each regular  
7 session, a report containing the director's evaluation of the  
8 operation and effects of this chapter. The report shall include  
9 a summary of the claims brought before the medical claim hearing  
10 office and the disposition of each claim, a description and  
11 summary of the work of the office under this chapter, an  
12 appraisal of the effectiveness of this chapter in securing  
13 prompt and fair disposition of medical tort claims, a review of  
14 the number and outcomes of claims brought under this part and  
15 recommendations for changes, modifications, or repeal of this  
16 chapter or parts thereof with accompanying reasons and data."

17           SECTION 3. Section 26-9, Hawaii Revised Statutes, is  
18 amended by amending subsection (o) to read as follows:

19           "(o) Every person licensed under any chapter within the  
20 jurisdiction of the department of commerce and consumer affairs  
21 and every person licensed subject to chapter 485A or registered  
22 under chapter 467B shall pay upon issuance of a license, permit,





1 certificate, or registration a fee and a subsequent annual fee  
2 to be determined by the director and adjusted from time to time  
3 to ensure that the proceeds, together with all other fines,  
4 income, and penalties collected under this section, do not  
5 surpass the annual operating costs of conducting compliance  
6 resolution activities required under this section. The fees may  
7 be collected biennially or pursuant to rules adopted under  
8 chapter 91, and shall be deposited into the special fund  
9 established under this subsection. Every filing pursuant to  
10 chapter 514E or section 485A-202(a)(26) shall be assessed, upon  
11 initial filing and at each renewal period in which a renewal is  
12 required, a fee that shall be prescribed by rules adopted under  
13 chapter 91, and that shall be deposited into the special fund  
14 established under this subsection. Any unpaid fee shall be paid  
15 by the licensed person, upon application for renewal,  
16 restoration, reactivation, or reinstatement of a license, and by  
17 the person responsible for the renewal, restoration,  
18 reactivation, or reinstatement of a license, upon the  
19 application for renewal, restoration, reactivation, or  
20 reinstatement of the license. If the fees are not paid, the  
21 director may deny renewal, restoration, reactivation, or  
22 reinstatement of the license. The director may establish,



1 increase, decrease, or repeal the fees when necessary pursuant  
2 to rules adopted under chapter 91. The director may also  
3 increase or decrease the fees pursuant to section 92-28.

4 There is created in the state treasury a special fund to be  
5 known as the compliance resolution fund to be expended by the  
6 director's designated representatives as provided by this  
7 subsection. Notwithstanding any law to the contrary, all  
8 revenues, fees, and fines collected by the department shall be  
9 deposited into the compliance resolution fund. Unencumbered  
10 balances existing on June 30, 1999, in the cable television fund  
11 under chapter 440G, the division of consumer advocacy fund under  
12 chapter 269, the financial institution examiners' revolving  
13 fund, section 412:2-109, the special handling fund, section 414-  
14 13, and unencumbered balances existing on June 30, 2002, in the  
15 insurance regulation fund, section 431:2-215, shall be deposited  
16 into the compliance resolution fund. This provision shall not  
17 apply to the drivers education fund underwriters fee, section  
18 431:10C-115, insurance premium taxes and revenues, revenues of  
19 the workers' compensation special compensation fund, section  
20 386-151, the captive insurance administrative fund, section  
21 431:19-101.8, the insurance commissioner's education and  
22 training fund, section 431:2-214, the medical malpractice



1 patients' compensation fund as administered under section 5 of  
2 Act 232, Session Laws of Hawaii 1984, and fees collected for  
3 deposit in the office of consumer protection restitution fund,  
4 section 487-14, the real estate appraisers fund, section 466K-1,  
5 the real estate recovery fund, section 467-16, the real estate  
6 education fund, section 467-19, the contractors recovery fund,  
7 section 444-26, the contractors education fund, section 444-29,  
8 the condominium management education fund, section 514A-131, and  
9 the condominium education trust fund, section 514B-71. Any law  
10 to the contrary notwithstanding, the director may use the moneys  
11 in the fund to employ, without regard to chapter 76, hearings  
12 officers and attorneys[-] and the executive director and hearing  
13 officer of the medical claim conciliation office. All other  
14 employees may be employed in accordance with chapter 76. Any  
15 law to the contrary notwithstanding, the moneys in the fund  
16 shall be used to fund the operations of the department. The  
17 moneys in the fund may be used to train personnel as the  
18 director deems necessary and for any other activity related to  
19 compliance resolution.

20 As used in this subsection, unless otherwise required by  
21 the context, "compliance resolution" means a determination of  
22 whether:



- 1           (1) Any licensee or applicant under any chapter subject to
- 2           the jurisdiction of the department of commerce and
- 3           consumer affairs has complied with that chapter;
- 4           (2) Any person subject to chapter 485A has complied with
- 5           that chapter;
- 6           (3) Any person submitting any filing required by chapter
- 7           514E or section 485A-202(a)(26) has complied with
- 8           chapter 514E or section 485A-202(a)(26);
- 9           (4) Any person has complied with the prohibitions against
- 10          unfair and deceptive acts or practices in trade or
- 11          commerce; or
- 12          (5) Any person subject to chapter 467B has complied with
- 13          that chapter;

14 and includes work involved in or supporting the above functions,  
15 licensing, or registration of individuals or companies regulated  
16 by the department, consumer protection, and other activities of  
17 the department.

18           The director shall prepare and submit an annual report to  
19 the governor and the legislature on the use of the compliance  
20 resolution fund. The report shall describe expenditures made  
21 from the fund including non-payroll operating expenses."



1 SECTION 4. Section 657-7.3, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 **"§657-7.3 Medical torts; limitation of actions; time.**

4 [~~No~~] Except for medical tort claims covered by chapter 671, no  
5 action for injury or death against a chiropractor, clinical  
6 laboratory technologist or technician, dentist, naturopath,  
7 nurse, nursing home administrator, dispensing optician,  
8 optometrist, osteopath, physician or surgeon, physical  
9 therapist, podiatrist, psychologist, or veterinarian duly  
10 licensed or registered under the laws of the State, or a  
11 licensed hospital as the employer of any such person, based upon  
12 such person's alleged professional negligence, or for rendering  
13 professional services without consent, or for error or omission  
14 in such person's practice, shall be brought more than two years  
15 after the plaintiff discovers, or through the use of reasonable  
16 diligence should have discovered, the injury, but in any event  
17 not more than six years after the date of the alleged act or  
18 omission causing the injury or death. This six-year time  
19 limitation shall be tolled for any period during which the  
20 person has failed to disclose any act, error, or omission upon  
21 which the action is based and which is known to the person.



1           Actions by a minor shall be commenced within six years from  
2 the date of the alleged wrongful act except the actions by a  
3 minor under the age of ten years shall be commenced within six  
4 years or by the minor's tenth birthday, whichever provides a  
5 longer period. Such time limitation shall be tolled for any  
6 minor for any period during which the parent, guardian, insurer,  
7 or health care provider has committed fraud or gross negligence,  
8 or has been a party to a collusion in the failure to bring  
9 action on behalf of the injured minor for a medical tort. The  
10 time limitation shall also be tolled for any period during which  
11 the minor's injury or illness alleged to have arisen, in whole  
12 or in part, from the alleged wrongful act or omission could not  
13 have been discovered through the use of reasonable diligence."

14           SECTION 5. Section 671-4, Hawaii Revised Statutes, is  
15 amended to read as follows:

16           "**§671-4 Notice of damages.** (a) In any medical tort  
17 action, the party against whom the [~~complaint,~~] claim,  
18 counterclaim, or cross-claim is made at any time may request a  
19 statement setting forth the nature and amount of the damages  
20 sought. The request shall be served upon the [~~complainant,~~]  
21 claimant, counterclaimant, or cross-claimant who shall serve a  
22 responsive statement as to the damages within fifteen days



1 thereafter. In the event a response is not served, the  
2 requesting party may petition the [~~court~~] medical claim hearing  
3 officer with notice to the other parties, to order the  
4 appropriate party to serve a responsive statement.

5 (b) If no request is made for a statement setting forth  
6 the nature and amount of damages sought, the [~~complainant,~~]  
7 claimant, counterclaimant, or cross-claimant, as the case may  
8 be, shall give notice to the other of the amount of special and  
9 general damages sought to be recovered, either before a default  
10 may be taken, or in the event an answer is filed, [~~at least~~  
11 ~~sixty days prior to the date set for trial.~~] prior to the  
12 hearing, in accordance with rules adopted by the director."

13 SECTION 6. In codifying the new sections added by section  
14 2 of this Act, the revisor of statutes shall substitute  
15 appropriate section numbers for the letters used in designating  
16 the new sections in this Act.

17 SECTION 7. Statutory material to be repealed is bracketed  
18 and stricken. New statutory material is underscored.

19 SECTION 8. This Act shall take effect upon its approval.



**Report Title:**

Medical Torts

**Description:**

Requires claimants who reject the medical claim conciliation panel's award of damages and pursue litigation to pay the health care provider's attorneys' fees, costs, and cost of the provider's time under certain conditions. Establishes the medical claim conciliation hearing office and the positions of executive director and hearing officer. Directs the hearing officer to conduct hearings on medical claims in accordance with the administrative procedure act. Makes opinions issued by the hearing officer binding upon the parties. Repeals the medical claim conciliation panel. (HB575 HD1)

