

JAN 26 2009

S.B. NO. 855

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 amend sections
2 663-10.5 and 663-10.9, Hawaii Revised Statutes, to abolish joint
3 and several liability for government entities in all cases under
4 chapter 663, Hawaii Revised Statutes, so that government
5 entities would only be liable for the percentage share of the
6 damages actually attributable to the government entities.

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

9 "**§663-10.5 Government entity as a tortfeasor; abolition of**
10 **joint and several liability.** Any other law to the contrary
11 notwithstanding, including but not limited to sections 663-10.9,
12 663-11 to 663-13, 663-16, 663-17, and 663-31, in any case where
13 a government entity is determined to be a tortfeasor along with
14 one or more other tortfeasors, the government entity shall be
15 liable for no more than that percentage share of the damages
16 attributable to the government entity[~~; provided that joint and~~
17 ~~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)]~~ (4) Provided, however, that joint and several
12 liability for economic and noneconomic damages for
13 claims against design professionals, as defined in
14 chapter 672, and certified public accountants, as
15 defined in chapter 466, is abolished in actions not
16 involving physical injury or death to 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.

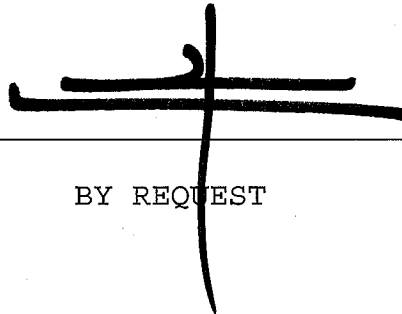
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1 SECTION 5. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 6. This Act shall take effect upon its approval.

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INTRODUCED BY: _____

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BY REQUEST

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.

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO CIVIL ACTIONS.

PURPOSE: To abolish joint and several liability for government entities in all cases under chapter 663, Hawaii Revised Statutes, by eliminating the retention of joint and several liability for tort claims against government entities relating to the maintenance and design of highways pursuant to section 663-10.9, Hawaii Revised Statutes, making government entities only responsible for their proportionate share of damages in all cases.

MEANS: Amend sections 663-10.5 and 663-10.9, Hawaii Revised Statutes.

JUSTIFICATION: Section 663-10.5 was intended to protect the public fisc by preventing government entities from being held jointly and severally liable for the entire damages in cases in which the government entities bore minimal responsibility in causing those damages. Section 663-10.5 abolished joint and several liability for government entities and provided that government entities would be liable for no more than that percentage share of the damages attributable to the government entities. In 2006, this statute was amended to retain joint and several liability for government entities for tort claims relating to the maintenance and design of highways pursuant to section 663-10.9.

This exception would be an unfair burden to the State's taxpayers and goes against the original intent of section 663-10.5 which was to "ensure fairness and equity for government entities who, because of their 'deep pockets' may be otherwise required to pay more than their fair share when

determined to be a joint tortfeasor." Conf. Comm. Rep. No. 48 on H.B. No. 1088, 1994 Regular Session.

Section 663-10.9(4) currently allows for recovery of noneconomic damages in motor vehicle accident tort claims relating to the maintenance and design of highways upon a showing that the affected joint tortfeasor was given reasonable prior notice of a prior occurrence under similar circumstances. However, the existence of just one prior accident would not necessarily be an accurate, fair, or even relevant indicator of reasonable prior notice since what constitutes "similar circumstances" would be open to varying interpretation and inconsistent application. Moreover, the existence of one prior occurrence to establish reasonable notice is contrary to applicable highway engineering standards.

Section 663-10.9(4) also provides for the recovery of noneconomic damages even without a showing of reasonable prior notice or a prior occurrence. A tortfeasor who has no prior notice of a particular hazard but otherwise fulfills its duty to properly design and maintain its highways should not be held liable for unforeseen accidents that may occur.

Impact on the public: This bill will ensure that the State and its taxpayers are not overburdened with paying excessive damages for highway-related injuries where the majority of fault is with another tortfeasor and the State has minimal responsibility and where it had no reasonable prior notice of prior similar accidents.

Impact on the department and other agencies: This bill will protect the general fund from excessive judgments for tort claims against the State relating to highway maintenance and design where there have been no prior notice of prior similar accidents and by

making the State responsible only for its proportionate share of damages when the State has minimal responsibility for tort claims relating to highway maintenance and design.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED
AGENCIES: Judiciary.

EFFECTIVE DATE: Upon approval.