
A BILL FOR AN ACT

RELATING TO MEDICAL LIABILITY.

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

1 PART I

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

4 "~~§~~671-1 **Definitions.** As used in this chapter:

5 "Catastrophic injuries" means irreversible, life-altering
6 injuries to an individual such as anoxic brain injury, permanent
7 paralysis, or other conditions as determined by the department
8 of health.

9 [~~1~~] "Health care provider" means a physician or surgeon
10 licensed under chapter 453, [~~a physician and surgeon licensed~~
11 ~~under chapter 460,~~] a podiatrist licensed under chapter 463E, a
12 health care facility as defined in section 323D-2, and the
13 employees of any of them[-]; provided that for purposes of
14 part of this chapter, the term shall include the legal
15 representatives of the health care provider. Health care
16 provider shall not mean any nursing institution or nursing
17 service conducted by and for those who rely upon treatment by



1 spiritual means through prayer alone, or employees of such
2 institution or service.

3 [~~2~~] "Medical tort" means:

4 (1) Except as otherwise provided in paragraph (2),
5 professional negligence, the rendering of professional
6 service without informed consent, or an error or
7 omission in professional practice, by a health care
8 provider, which proximately causes death, injury, or
9 other damage to a patient ~~[-]~~; or

10 (2) For purposes of part _____ of this chapter, a negligent
11 act or omission to act by a health care provider in
12 rendering professional services, or the provision of
13 professional service by a health care provider without
14 informed consent, which service is within the scope of
15 services for which the provider is licensed and is not
16 within any restriction imposed by the licensing agency
17 or licensed hospital, and which act or omission or
18 provision of service without informed consent occurs
19 in a county with a population of less than five
20 hundred thousand and is the proximate cause of a
21 personal injury or wrongful death.



1 **§671-C Assessing percentage of negligence.** Upon request
2 of any nonsettling health care provider against whom a plaintiff
3 alleges a medical tort that has caused injury, the trier of fact
4 shall consider, in assessing any percentage of negligence or
5 other fault, the negligence or other fault of all parties,
6 including the negligence or other fault of any person or entity
7 who has entered into a settlement with the plaintiff for the
8 claimed damages, even when the settlement has been determined to
9 have been made in good faith, pursuant to section 663-15.5.

10 **§671-D Economic damages.** (a) A trier of fact may render
11 a verdict for the plaintiff in a medical tort action that
12 includes economic damages.

13 (b) For the purposes of this section, "economic damages"
14 include:

- 15 (1) Past and future medical expenses;
- 16 (2) Loss of past and future earnings;
- 17 (3) Loss of use of property;
- 18 (4) Cost of repair or replacement;
- 19 (5) Cost of obtaining domestic services;
- 20 (6) Loss of employment; and
- 21 (7) Loss of business and employment opportunities.



1 **§671-E Proportionate allocation of economic damages.** The
2 amount of economic damages allocated to a health care provider
3 in a medical tort action shall be based upon the health care
4 provider's proportionate percentage of negligence or other
5 fault.

6 **§671-F Noneconomic damages.** (a) If the trier of fact
7 renders a verdict for the plaintiff in a medical tort action,
8 the court shall enter judgment of liability against each
9 defendant health care provider for noneconomic damages in
10 accordance with the percentage of negligence or other fault for
11 economic damages that is attributed to the health care provider
12 by the trier of fact.

13 (b) Judgment shall not be entered against any health care
14 provider who has not been named a party or has been released,
15 dismissed, or otherwise discharged as a party pursuant to
16 section 663-15.5."

17 SECTION 3. Section 663-8.7, Hawaii Revised Statutes, is
18 amended to read as follows:

19 " [f] **§663-8.7 [f] Limitation on pain and suffering.** Damages
20 recoverable for pain and suffering as defined in section 663-8.5
21 shall be limited to a maximum award of \$375,000; provided that
22 this limitation shall not apply to [text]:



1 (1) Consult with medical malpractice insurance companies
2 and representatives of medical specialty societies in
3 the state; and

4 (2) Determine high-risk medical specialties based on
5 statewide data for each specialty, including data
6 regarding medical tort claims, judgments, awards,
7 settlements, and medical malpractice insurance
8 premiums.

9 SECTION 6. This Act does not affect rights and duties that
10 matured, penalties that were incurred, and proceedings that were
11 begun, before its effective date.

12 SECTION 7. In codifying the new sections added by section
13 2 of this Act, the revisor of statutes shall substitute
14 appropriate section numbers for the letters used in designating
15 the new sections in this Act.

16 SECTION 8. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 9. This Act shall take effect on January 1, 2011,
19 and shall be repealed on December 31, 2015; provided that:

20 (1) Section 5 of this Act shall take effect upon the
21 ~~approval of this Act; and~~



1 (2) Parts I and II of this Act shall apply to injuries and
2 deaths occurring after the effective date of this Act.
3

INTRODUCED BY: _____

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JAN 28 2009



Report Title:

Medical Tort Liability; Noneconomic Damages

Description:

Addresses medical malpractice insurance costs by capping noneconomic damages at \$500,000 for high-risk medical specialties and \$250,000 for all other specialties, establishing a limit of \$3,000,000 for noneconomic damages determined by the court to be for catastrophic injuries, and requiring that economic damages be allocated based upon proportionate percentage of negligence. Sunsets December 31, 2015.

