
A BILL FOR AN ACT

RELATING TO HEALTH.

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

1 SECTION 1. The increasing cost of malpractice insurance
2 and escalating monetary awards in medical malpractice lawsuits
3 are major factors in the current physician shortage experienced
4 by the State of Hawaii and the neighbor islands in particular.
5 Malpractice insurance premiums have skyrocketed for Hawaii
6 physicians, with physicians in high-risk specialties such as
7 surgery and obstetrics, experiencing the highest increase.
8 Monetary awards in malpractice lawsuits are escalating,
9 especially with respect to awards for non-economic damages.

10 As a result of the malpractice situation, many physicians
11 are choosing to retire early, limit their practice, or refrain
12 from practicing in Hawaii. Medical students are avoiding
13 medical specialties that have a high risk of medical malpractice
14 exposure. Defensive medicine may also be practiced, where a
15 physician orders tests and procedures to protect themselves from
16 malpractice liability. Diminishing access to health care is of
17 particular concern in rural areas, such as the neighbor islands,



1 where relatively few doctors and fewer specialists and sub-
2 specialists continue to practice.

3 The legislature finds that to address this critical
4 situation, a patient's right to recover non-economic damages for
5 injuries suffered as a result of health care negligence must be
6 balanced against the State's interest in ensuring access to
7 health care services.

8 The legislature also finds that medical savings accounts
9 represent a proven method for reducing health care costs through
10 personal responsibility. In addition to controlling costs,
11 medical savings accounts offer advantages to the consumer as
12 well, including complete portability, increased access to
13 healthcare by removing third-party gatekeepers (i.e., insurers
14 that will not pay for best case service or treatment due to
15 cost, and ability to pay for long-term care costs not covered by
16 Medicare.

17 The purpose of this Act is: (1) to place a cap on the
18 amount of non-economic damages that may be recovered in medical
19 malpractice actions in Hawaii, which is contingent on the
20 compliance of all insurers providing professional liability
21 insurance in Hawaii with the premium rate limitations set by



1 this Act, and (2) to authorize and implement medical savings
2 accounts.

3 PART I.

4 SECTION 2. Chapter 671, Hawaii Revised Statutes, is
5 amended by adding four new sections to be appropriately
6 designated and to read as follows:

7 **§671-A Limitation on noneconomic damages.**

8 Notwithstanding section 663-8.7, noneconomic damages as defined
9 in section 663-8.5 shall be limited in medical tort actions to a
10 maximum award of \$500,000.

11 **§671-B Assessing percentage of negligence.** Upon request
12 of any nonsettling healthcare provider against whom a plaintiff
13 alleges a medical tort causing injury, the trier of fact shall
14 consider, in assessing any percentage of negligence or other
15 fault, the negligence or other fault of all alleged parties,
16 including the negligence or other fault of any person or entity
17 who has entered into a settlement with the plaintiff for the
18 claimed damages, even when the settlement has been determined to
19 have been made in good faith, pursuant to section 663-15.5.

20 **§671-C Proportionate allocation of economic damages.** The
21 amount of economic damages allocated to a healthcare provider in
22 a medical tort action shall be based upon the healthcare



1 provider's proportionate percentage of negligence or other
2 fault.

3 **§671-D Noneconomic damages.** (a) If the trier of fact
4 renders a verdict for the plaintiff in a medical tort action,
5 the court shall enter judgment of liability against each
6 defendant healthcare provider in accordance with the percentage
7 of negligence or other fault for compensatory damages that is
8 attributed to the healthcare provider by the trier of fact.

9 (b) Where a healthcare provider's degree of negligence is
10 less than twenty-five per cent, then the amount recoverable
11 against that healthcare provider for noneconomic damages shall
12 be in direct proportion to the degree of the negligence
13 assigned.

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

18 SECTION 3. Section 663-11, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**§663-11 Joint tortfeasors defined.** For the purpose of
21 this part, the term "joint tortfeasors" means two or more
22 persons jointly or severally liable in tort for the same injury



1 to person or property, whether or not judgment has been
2 recovered against all or some of them[~~-~~], except as provided for
3 healthcare providers in chapter 671."

4 SECTION 4. Section 671-1, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "§671-1 **Definitions.** As used in this chapter:

7 [~~1~~] "Health care provider" or "healthcare provider"
8 means a physician or surgeon licensed under chapter 453, a
9 physician and surgeon licensed under chapter 460, a podiatrist
10 licensed under chapter 463E, a health care facility as defined
11 in section 323D-2, a chiropractor licensed under chapter 442, a
12 dentist licensed under chapter 448, a dental hygienist licensed
13 under chapter 447, an acupuncture practitioner licensed under
14 chapter 436E, a massage therapist licensed under chapter 452, a
15 nurse licensed under chapter 457, an occupational therapist
16 licensed under chapter 457G, an optometrist licensed under
17 chapter 459, a pharmacist licensed under chapter 461, a physical
18 therapist licensed under chapter 461J, a psychologist licensed
19 under chapter 465, a marriage and family therapist licensed
20 under chapter 451J, a dietitian licensed under chapter 448B, a
21 radiologic technologist licensed under chapter 466J, a speech
22 pathologist or audiologist licensed under chapter 468E, a



1 "§235-2.4 **Operation of certain Internal Revenue Code**
2 **provisions; sections 63 to 530.** (a) Section 63 (with respect
3 to taxable income defined) of the Internal Revenue Code shall be
4 operative for the purposes of this chapter, subject to the
5 following:

6 (1) Sections 63(c)(1)(B) (relating to the additional
7 standard deduction), 63(c)(1)(C) (relating to the real
8 property tax deduction), 63(c)(1)(D) (relating to the
9 disaster loss deduction), 63(c)(4) (relating to
10 inflation adjustments), 63(c)(7) (defining the real
11 property tax deduction), 63(c)(8) (defining the
12 disaster loss deduction), and 63(f) (relating to
13 additional amounts for the aged or blind) of the
14 Internal Revenue Code shall not be operative for
15 purposes of this chapter;

16 (2) *[Paragraph effective until December 31, 2010. For*
17 *paragraph effective January 1, 2011, see below.]*
18 Section 63(c)(2) (relating to the basic standard
19 deduction) of the Internal Revenue Code shall be
20 operative, except that the standard deduction amounts
21 provided therein shall instead mean:

22 (A) \$4,000 in the case of:



- 1 (i) A joint return as provided by section 235-
- 2 93; or
- 3 (ii) A surviving spouse (as defined in section
- 4 2(a) of the Internal Revenue Code);
- 5 (B) \$2,920 in the case of a head of household (as
- 6 defined in section 2(b) of the Internal Revenue
- 7 Code);
- 8 (C) \$2,000 in the case of an individual who is not
- 9 married and who is not a surviving spouse or head
- 10 of household; or
- 11 (D) \$2,000 in the case of a married individual filing
- 12 a separate return;
- 13 (2) *[Paragraph effective January 1, 2011. For paragraph*
- 14 *effective until December 31, 2010, see above. Repeal*
- 15 *and reenactment on December 31, 2015. L 2009, c 60,*
- 16 *\$6(3).]* Section 63(c)(2) (relating to the basic
- 17 standard deduction) of the Internal Revenue Code shall
- 18 be operative, except that the standard deduction
- 19 amounts provided therein shall instead mean:
- 20 (A) \$4,400 in the case of:
- 21 (i) A joint return as provided by section 235-
- 22 93; or



- 1 (ii) A surviving spouse (as defined in section
- 2 2(a) of the Internal Revenue Code);
- 3 (B) \$3,212 in the case of a head of household (as
- 4 defined in section 2(b) of the Internal Revenue
- 5 Code);
- 6 (C) \$2,200 in the case of an individual who is not
- 7 married and who is not a surviving spouse or head
- 8 of household; or
- 9 (D) \$2,200 in the case of a married individual filing
- 10 a separate return;

11 (3) Section 63(c)(5) (limiting the basic standard
12 deduction in the case of certain dependents) of the
13 Internal Revenue Code shall be operative, except that
14 the limitation shall be the greater of \$500 or such
15 individual's earned income; and

16 (4) The standard deduction amount for nonresidents shall
17 be calculated pursuant to section 235-5.

18 (b) Section 72 (with respect to annuities; certain
19 proceeds of endowment and life insurance contracts) of the
20 Internal Revenue Code shall be operative for purposes of this
21 chapter and be interpreted with due regard to section 235-7(a),
22 except that the ten per cent additional tax on early

1 distributions from retirement plans in section 72(t) shall not
2 be operative for purposes of this chapter.

3 (c) Section 121 (with respect to exclusion of gain from
4 sale of principal residence) of the Internal Revenue Code shall
5 be operative for purposes of this chapter, except that for the
6 election under section 121(f), a reference to section 1034
7 treatment means a reference to section 235-2.4(n) in effect for
8 taxable year 1997.

9 (d) Section 163 (with respect to interest) of the Internal
10 Revenue Code shall be operative for the purposes of this
11 chapter, except that provisions in section 163(d)(4)(B)
12 (defining net investment income to exclude dividends) shall not
13 be operative for the purposes of this chapter.

14 (e) Section 165 (with respect to losses) of the Internal
15 Revenue Code shall be operative for purposes of this chapter,
16 except that the amount prescribed by section 165(h)(1) (relating
17 to the limitation per casualty) of the Internal Revenue Code
18 shall be a \$100 limitation per casualty, and section 165(d)
19 (with respect to wagering losses) [and] sections 165(h)(3)(A)
20 and 165(h)(3)(B) (both of which relate to special rules for
21 personal casualty gains and losses in federally declared
22 disasters) of the Internal Revenue Code shall not be operative



1 for the purposes of this chapter. Section 165 as operative for
2 this chapter shall also apply to losses sustained from the sale
3 of stocks or other interests issued through the exercise of the
4 stock options or warrants granted by a qualified high technology
5 business as defined in section 235-7.3.

6 (f) Section 168 (with respect to the accelerated cost
7 recovery system) of the Internal Revenue Code shall be operative
8 for purposes of this chapter, except that sections 168(j)
9 (relating to property on Indian reservations), 168(k) (relating
10 to the special allowance for certain property acquired during
11 the period specified therein), 168(m) (relating to the special
12 allowance for certain reuse and recycling property), and 168(n)
13 (relating to the special allowance for qualified disaster
14 assistance property) of the Internal Revenue Code shall not be
15 operative for purposes of this chapter.

16 (g) Section 172 (with respect to net operating loss
17 deductions) of the Internal Revenue Code shall be operative for
18 purposes of this chapter, as further provided in section 235-
19 7(d), except that sections 172(b)(1)(J) and 172(j) (both of
20 which relate to qualified disaster losses) of the Internal
21 Revenue Code shall not be operative for purposes of this
22 chapter.



1 (h) Section 179 (with respect to the election to expense
2 certain depreciable business assets) of the Internal Revenue
3 Code shall be operative for purposes of this chapter, except
4 that provisions relating to:

5 (1) The increase of the maximum deduction to \$100,000 for
6 taxable years beginning after 2002 and before 2008,
7 and the increase of the maximum deduction to \$125,000
8 for taxable years beginning after 2006 and before
9 2011, in section 179(b)(1);

10 (2) The increase of the qualifying investment amount to
11 \$400,000 for taxable years beginning after 2002 and
12 before 2008, and the increase of the qualifying
13 investment amount to \$500,000 for taxable years
14 beginning after 2006 and before 2011, in section
15 179(b)(2);

16 (3) The increase of the maximum deduction to \$250,000 and
17 the increase of the qualifying investment amount to
18 \$800,000 for taxable years beginning in 2008, in
19 section 179(b)(7);

20 (4) Defining section 179 property to include computer
21 software in section 179(d)(1);

22 (5) Inflation adjustments in section 179(b)(5);



1 (6) Irrevocable election in section 179(c)(2); and

2 (7) Special rules for qualified disaster assistance
3 property in section 179(e),

4 shall not be operative for the purposes of this chapter.

5 (i) Section 198A (with respect to the expensing of
6 qualified disaster assistances expenses) of the Internal Revenue
7 Code shall not be operative for purposes of this chapter.

8 (j) Section 219 (with respect to retirement savings) of
9 the Internal Revenue Code shall be operative for the purpose of
10 this chapter. For the purpose of computing the limitation on
11 the deduction for active participants in certain pension plans
12 for state income tax purposes, adjusted gross income as used in
13 section 219 as operative for this chapter means federal adjusted
14 gross income.

15 (k) Section 220 (with respect to medical savings accounts)
16 of the Internal Revenue Code shall be operative for the purpose
17 of this chapter, but only with respect to medical services
18 accounts that have been approved by the Secretary of the
19 Treasury of the United States.

20 (l) Section 223 (with respect to health savings accounts)
21 of the Internal Revenue Code shall be operative for the purpose
22 of this chapter.



1 [[1]] (m) Section 265 (with respect to expenses and
2 interest relating to tax-exempt income) of the Internal Revenue
3 Code shall be operative for purposes of this chapter; except
4 that it shall not apply to expenses for royalties and other
5 income derived from any patents, copyrights, and trade secrets
6 by an individual or a qualified high technology business as
7 defined in section 235-7.3. Such expenses shall be deductible.

8 [(m)] (n) Section 408A (with respect to Roth Individual
9 Retirement Accounts) of the Internal Revenue Code shall be
10 operative for the purposes of this chapter. For the purposes of
11 determining the aggregate amount of contributions to a Roth
12 Individual Retirement Account or qualified rollover contribution
13 to a Roth Individual Retirement Account from an individual
14 retirement plan other than a Roth Individual Retirement Account,
15 adjusted gross income as used in section 408A as operative for
16 this chapter means federal adjusted gross income.

17 [(n)] (o) In administering the provisions of sections 410
18 to 417 (with respect to special rules relating to pensions,
19 profit sharing, stock bonus plans, etc.), sections 418 to 418E
20 (with respect to special rules for multiemployer plans), and
21 sections 419 and 419A (with respect to treatment of welfare
22 benefit funds) of the Internal Revenue Code, the department of



1 taxation shall adopt rules under chapter 91 relating to the
2 specific requirements under such sections and to such other
3 administrative requirements under those sections as may be
4 necessary for the efficient administration of sections 410 to
5 419A.

6 In administering sections 401 to 419A (with respect to
7 deferred compensation) of the Internal Revenue Code, Public Law
8 93-406, section 1017(i), shall be operative for the purposes of
9 this chapter.

10 In administering section 402 (with respect to the
11 taxability of beneficiary of employees' trust) of the Internal
12 Revenue Code, the tax imposed on lump sum distributions by
13 section 402(e) of the Internal Revenue Code shall be operative
14 for the purposes of this chapter and the tax imposed therein is
15 hereby imposed by this chapter at the rate determined under this
16 chapter.

17 [(o)] (p) In administering section 403 (with respect to
18 taxation of employee annuities) of the Internal Revenue Code,
19 any funds that represent pre-tax employee deferrals or
20 contributions that are distributed from the annuity and used
21 solely to obtain retirement credits under the state [employees']
22 retirement system shall not be treated as a rollover for



1 purposes of section 403(b)(8)(A) of the Internal Revenue Code,
2 and such funds shall be subject to income tax under this
3 chapter.

4 [(p)] (q) Section 451 (which provides general rules for
5 taxable year of inclusion) of the Internal Revenue Code shall be
6 operative, except that the provisions of sections 451(i)(3) and
7 451(i)(6), as they relate to a qualified electric utility, shall
8 not be operative for purposes of this chapter.

9 [(q)] (r) In administering section 457 (with respect to
10 compensation plans of state and local governments and tax-exempt
11 organizations) of the Internal Revenue Code, any funds that
12 represent pre-tax employee deferrals or contributions that are
13 distributed from the deferred compensation plan and used solely
14 to obtain retirement credits under the state [employees']
15 retirement system shall not be treated as a rollover for
16 purposes of section 457(e)(16)(A) of the Internal Revenue Code
17 and such funds shall be subject to income tax under this
18 chapter.

19 [(r)] (s) Section 468B (with respect to special rules for
20 designated settlement funds) of the Internal Revenue Code shall
21 be operative for the purposes of this chapter and the tax
22 imposed therein is hereby imposed by this chapter at a rate



1 equal to the maximum rate in effect for the taxable year imposed
2 on estates and trusts under section 235-51.

3 [[s)] (t) Section 469 (with respect to passive activities
4 and credits limited) of the Internal Revenue Code shall be
5 operative for the purposes of this chapter. For the purpose of
6 computing the offset for rental real estate activities for state
7 income tax purposes, adjusted gross income as used in section
8 469 as operative for this chapter means federal adjusted gross
9 income.

10 [~~(t)~~] (u) Sections 512 to 514 (with respect to taxation of
11 business income of certain exempt organizations) of the Internal
12 Revenue Code shall be operative for the purposes of this chapter
13 as provided in this subsection.

14 "Unrelated business taxable income" means the same as in
15 the Internal Revenue Code, except that in the computation
16 thereof sections 235-3 to 235-5, and 235-7 (except subsection
17 (c)), shall apply, and in the determination of the net operating
18 loss deduction there shall not be taken into account any amount
19 of income or deduction that is excluded in computing the
20 unrelated business taxable income. Unrelated business taxable
21 income shall not include any income from a prepaid legal service
22 plan.



1 For a person described in section 401 or 501 of the
2 Internal Revenue Code, as modified by section 235-2.3, the tax
3 imposed by section 235-51 or 235-71 shall be imposed upon the
4 person's unrelated business taxable income.

5 [(u)] (v) Section 521 (with respect to cooperatives) and
6 Subchapter T (Sections 1381 to 1388, with respect to
7 cooperatives and their patrons) of the Internal Revenue Code
8 shall be operative for the purposes of this chapter as to any
9 cooperative fully meeting the requirements of section 421-23,
10 except that Internal Revenue Code section 521 cooperatives need
11 not be organized in Hawaii.

12 [(v)] (w) Sections 527 (with respect to political
13 organizations) and 528 (with respect to certain homeowners
14 associations) of the Internal Revenue Code shall be operative
15 for the purposes of this chapter and the taxes imposed in each
16 section are hereby imposed by this chapter at the rates
17 determined under section 235-71.

18 [(w)] (x) Section 529 (with respect to qualified tuition
19 programs) shall be operative for the purposes of this chapter,
20 except that section 529(c)(6) shall not be operative.

21 [(x)] (y) Section 530 (with respect to education individual
22 retirement accounts) of the Internal Revenue Code shall be



1 operative for the purposes of this chapter. For the purpose of
2 determining the maximum amount that a contributor could make to
3 an education individual retirement account for state income tax
4 purposes, modified adjusted gross income as used in section 530
5 as operative for this chapter means federal modified adjusted
6 gross income as defined in section 530."

7 SECTION 6. This Act does not affect rights and duties that
8 matured, penalties that were incurred, and proceedings that were
9 begun, before its effective date, nor does it affect the rights
10 of the State of Hawaii under section 663-10.5, Hawaii Revised
11 Statutes.

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



1 SECTION 9. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 10. This Act shall take effect upon its approval;
4 provided that Part II of this Act shall take effect on July 1,
5 2010, and shall apply to taxable years beginning after December
6 31, 2010, and further provided that Part I of this Act shall be
7 repealed on the earlier of January 1, 2016, or upon the failure
8 of any insurer providing professional liability insurance for a
9 health care provider in the state to meet the following
10 requirements:

11 (1) Between July 1, 2010, and December 31, 2010, no
12 insurer providing professional liability insurance for
13 a health care provider in the state may increase the
14 professional liability insurance rates unless a rate
15 increase is required to avoid imminent insolvency or
16 provide a fair rate of return;

17 (2) Beginning January 1, 2011, all insurers providing
18 professional liability insurance for health care
19 providers in the state shall implement a premium rate
20 that is the lower of the following:

21 (A) Not greater than the rate in effect on January 1,
22 2007, unless to do so would cause imminent



1 insolvency or fail to provide a fair rate of
2 return; or

3 (B) Seventy-five per cent of the lowest rate in
4 effect between January 1, 2007, and December 31,
5 2010, unless to do so would cause imminent
6 insolvency or fail to provide a fair rate of
7 return;

8 and

9 (3) Beginning January 1, 2012, no insurer providing
10 professional liability insurance for a health care
11 provider may implement any rate increase greater than
12 two and one half per cent in any twelve month period,
13 unless a rate increase greater than two and one half
14 per cent is required to avoid imminent insolvency or
15 provide a fair rate of return.

16 Any person may seek a declaratory judgment as to whether an
17 insurer has failed to comply with paragraph 1, 2, or 3 by
18 bringing an action against the insurer in the circuit court of
19 the county in which the petitioner resides or has its principal
20 place of business; provided that upon the repeal of this Act,
21 sections 663-11 and 671-1, Hawaii Revised Statutes, shall be




1 reenacted in the same form they were in one day prior to this
2 Act taking effect.

3

4

INTRODUCED BY:



JAN 26 2010



Report Title:

Medical Malpractice; Insurance; Non-economic Damages; Health Savings Accounts

Description:

Limits non-economic damages in medical tort actions contingent on compliance with premium rate caps by insurers providing professional liability insurance in Hawaii. Sunsets on the earlier of the date on which an insurer does not comply with the premium rate caps, or July 1, 2016. Conforms state tax treatment of health savings accounts to federal tax treatment.

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