

JAN 21 2011

A BILL FOR AN ACT

RELATING TO TORTS.

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

1 SECTION 1. Section 663-15.5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§663-15.5 Release; joint tortfeasors; co-obligors; good**
4 **faith settlement.** (a) A release, dismissal with or without
5 prejudice, or a covenant not to sue or not to enforce a judgment
6 that is given in good faith under subsection (b) to one or more
7 joint tortfeasors, or to one or more co-obligors who are
8 mutually subject to contribution rights, shall:

9 (1) Not discharge any other joint tortfeasor or co-obligor
10 not released from liability unless its terms so
11 provide;

12 (2) Reduce the claims against the other joint tortfeasor
13 or co-obligor not released in the amount stipulated by
14 the release, dismissal, or covenant, or in the amount
15 of the consideration paid for it, whichever is
16 greater; and



1 (3) Discharge the party to whom it is given from all
2 liability for any contribution to any other joint
3 tortfeasor or co-obligor.

4 This subsection shall not apply to co-obligors who have
5 expressly agreed in writing to an apportionment of liability for
6 losses or claims among themselves.

7 (b) For purposes of subsection (a), any party shall
8 petition the court for a hearing on the issue of good faith of a
9 settlement entered into by the plaintiff or other claimant and
10 one or more alleged tortfeasors or co-obligors, serving notice
11 to all other known joint tortfeasors or co-obligors. Upon a
12 showing of good cause, the court may shorten the time for giving
13 the required notice to permit the determination of the issue
14 before the commencement of the trial of the action, or before
15 the verdict or judgment if settlement is made after the trial
16 has commenced.

17 The petition shall indicate the settling parties and,
18 except for a settlement that includes a confidentiality
19 agreement regarding the case or the terms of the settlement, the
20 basis, terms, and settlement amount.

21 The notice, petition, and proposed order shall be served as
22 provided by rules of court or by certified mail, return receipt



1 requested. Proof of service shall be filed with the court.
2 Within twenty-five days of the mailing of the notice, petition,
3 and proposed order, a nonsettling alleged joint tortfeasor or
4 co-obligor may file an objection to contest the good faith of
5 the settlement. If none of the nonsettling alleged joint
6 tortfeasors or co-obligors files an objection within the twenty-
7 five days, the court may approve the settlement without a
8 hearing. An objection by a nonsettling alleged joint tortfeasor
9 or co-obligor shall be served upon all parties. A nonsettling
10 alleged joint tortfeasor or co-obligor asserting a lack of good
11 faith shall have the burden of proof on that issue.

12 Where a confidentiality agreement has been entered into
13 regarding the claim or settlement terms, the court shall hear
14 the matter in a manner consistent with preventing public
15 disclosure of the agreement while providing other joint
16 tortfeasors and co-obligors sufficient information to object to
17 a proposed settlement.

18 (c) The court may determine the issue of good faith for
19 purposes of subsection (a) on the basis of affidavits or
20 declarations served with the petition under subsection (a), and
21 any affidavits or declarations filed in response. In the



1 alternative, the court, in its discretion, may receive other
2 evidence at a hearing.

3 (d) A determination by the court that a settlement was
4 made in good faith shall:

5 (1) Bar any other joint tortfeasor or co-obligor from any
6 further claims against the settling tortfeasor or co-
7 obligor, except those based on a written indemnity
8 agreement; and

9 (2) Result in a dismissal of all cross-claims filed
10 against the settling joint tortfeasor or co-obligor,
11 except those based on a written indemnity agreement.

12 (e) A party aggrieved by a court determination on the
13 issue of good faith may appeal the determination. The appeal
14 shall be filed within twenty days after service of written
15 notice of the determination, or within any additional time not
16 exceeding twenty days as the court may allow.

17 (f) The running of any statute of limitations or other
18 time limitations shall be tolled during the period of
19 consideration by the court on the issue of good faith.

20 (g) The procedures, rights, and obligations of this
21 section shall apply to a release, dismissal, or covenant given



1 before, as well as after, a lawsuit has been filed and does not
2 require the existence of a lawsuit.

3 (h) This section shall not apply to a release, dismissal
4 with or without prejudice, or a covenant not to sue or not to
5 enforce judgment given to a co-obligor on an alleged contract
6 debt where the contract was made prior to January 1, 2002.

7 (i) When a release has been given pursuant to the terms of
8 this chapter, nonsettling parties shall have the right to
9 require that a court include the settling entities upon any
10 verdict or judgment form, such that the finder of fact shall
11 consider and make a finding as to any liability, responsibility,
12 or apportionment of fault of the settling entities, and the
13 nonsettling parties shall be allowed to present evidence at
14 trial as to the liability, responsibility, or apportionment of
15 fault of the settling entity. Nothing in this subsection shall
16 preclude a nonsettling party from obtaining judgment pursuant to
17 the Hawaii Rules of Civil Procedure as a matter of law prior to
18 or during trial."

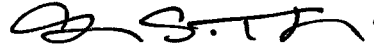
19 SECTION 2. New statutory material is underscored.



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

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INTRODUCED BY:



By Request



Report Title:

Torts; Joint and Several Liability

Description:

Permits the finder of fact to consider the civil liability of settling entities when determining the non-settling parties' liability.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

