

JAN 21 2011

S.B. NO. 841

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# A BILL FOR AN ACT

RELATING TO JOINT AND SEVERAL LIABILITY.

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

1           SECTION 1. The legislature believes that the present  
2 system of joint and several liability is unfair and inequitable  
3 in that a person with only one per cent of fault can become  
4 liable for one hundred per cent of the damages. Even if the  
5 plaintiff was partially to blame, a person with only one per  
6 cent of fault could have to pay nearly all of the damages.  
7 Joint and several liability has led to a search for "deep  
8 pockets," or governments, large companies, and other insured  
9 persons and entities, who must bear the greatest burdens of  
10 liability even if their involvement is minimal.

11           The legislature finds that the fairest solution is to  
12 abolish joint and several liability. This Act clarifies that  
13 each joint tortfeasor may be held liable for no more than that  
14 percentage share of the damages attributable to that joint  
15 tortfeasor.

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



1           "§663-10.5 Government entity as a tortfeasor [~~abolition~~  
2 ~~of joint and several liability~~]. [~~Any other law to the contrary~~  
3 notwithstanding, including but not limited to sections 663-10.9,  
4 663-11 to 663-13, 663-16, 663-17, and 663-31, in any case where  
5 a government entity is determined to be a tortfeasor along with  
6 one or more other tortfeasors, the government entity shall be  
7 liable for no more than that percentage share of the damages  
8 attributable to the government entity; provided that joint and  
9 several liability shall be retained for tort claims relating to  
10 the maintenance and design of highways pursuant to section 663-  
11 10.9.]

12           For purposes of this section, "government entity" means any  
13 unit of government in this State, including the State and any  
14 county or combination of counties, department, agency,  
15 institution, board, commission, district, council, bureau,  
16 office, governing authority, or other instrumentality of state  
17 or county government, or corporation or other establishment  
18 owned, operated, or managed by or on behalf of this State or any  
19 county.

20           For purposes of this section, the liability of a government  
21 entity shall include its vicarious liability for the acts or  
22 omissions of its officers and employees."



1 SECTION 3. Section 663-10.9, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§663-10.9 Abolition of joint and several liability;  
4 exceptions. (a) Joint and several liability for joint  
5 tortfeasors [~~as defined in section 663-11~~] is abolished [~~except~~  
6 ~~in the following circumstances:~~

7 ~~(1) For the recovery of economic damages against joint~~  
8 ~~tortfeasors in actions involving injury or death to~~  
9 ~~persons;~~

10 ~~(2) For the recovery of economic and noneconomic damages~~  
11 ~~against joint tortfeasors in actions involving:~~

12 ~~(A) Intentional torts;~~

13 ~~(B) Torts relating to environmental pollution;~~

14 ~~(C) Toxic and asbestos related torts;~~

15 ~~(D) Torts relating to aircraft accidents;~~

16 ~~(E) Strict and products liability torts; or~~

17 ~~(F) Torts relating to motor vehicle accidents except~~  
18 ~~as provided in paragraph (4);~~

19 ~~(3) For the recovery of noneconomic damages in actions,~~  
20 ~~other than those enumerated in paragraph (2),~~

21 ~~involving injury or death to persons against those~~

22 ~~tortfeasors whose individual degree of negligence is~~



1 ~~found to be twenty five per cent or more under section~~  
2 ~~663 31. Where a tortfeasor's degree of negligence is~~  
3 ~~less than twenty five per cent, then the amount~~  
4 ~~recoverable against that tortfeasor for noneconomic~~  
5 ~~damages shall be in direct proportion to the degree of~~  
6 ~~negligence assigned; and~~

7 ~~(4) For recovery of noneconomic damages in motor vehicle~~  
8 ~~accidents involving tort actions relating to the~~  
9 ~~maintenance and design of highways including actions~~  
10 ~~involving guardrails, utility poles, street and~~  
11 ~~directional signs, and any other highway related~~  
12 ~~device upon a showing that the affected joint~~  
13 ~~tortfeasor was given reasonable prior notice of a~~  
14 ~~prior occurrence under similar circumstances to the~~  
15 ~~occurrence upon which the tort claim is based. In~~  
16 ~~actions in which the affected joint tortfeasor has not~~  
17 ~~been shown to have had such reasonable prior notice,~~  
18 ~~the recovery of noneconomic damages shall be as~~  
19 ~~provided in paragraph (3).~~

20 ~~(5) Provided, however, that joint and several liability~~  
21 ~~for economic and noneconomic damages for claims~~  
22 ~~against design professionals, as defined in chapter~~



1           ~~672, and certified public accountants, as defined in~~  
2           ~~chapter 466, is abolished in actions not involving~~  
3           ~~physical injury or death to persons].~~

4           (b) Each party shall be liable for:

5           (1) That party's share of any damages only, and not for the  
6           share of any other person; and

7           (2) The amount of damages allocated to that party in direct  
8           proportion to the party's percentage of responsibility.

9           (c) A separate judgment shall be rendered against each  
10          party for the amount allocated to that party. For the purposes  
11          of this section, the trier of fact shall determine the  
12          proportion of responsibility of each party for the claimant's  
13          harm."

14          SECTION 4. Section 663-11, Hawaii Revised Statutes, is  
15          amended to read as follows:

16          "**§663-11 Joint tortfeasors defined.** For the purpose of  
17          this part, the term "joint tortfeasors" means two or more  
18          persons [~~jointly or severally~~] who are liable in tort for the  
19          same injury to person or property, whether or not judgment has  
20          been recovered against all or some of them."



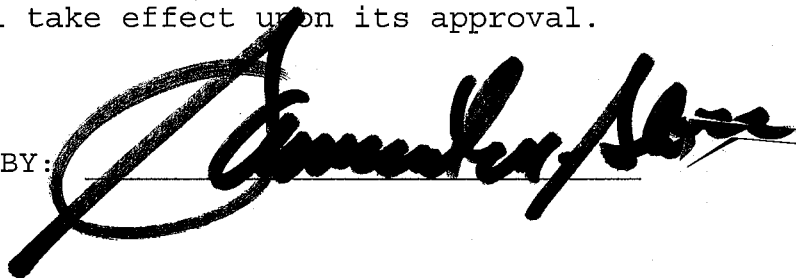
1 SECTION 5. This Act does not affect rights and duties that  
2 matured, penalties that were incurred, and proceedings that were  
3 begun, before its effective date.

4 SECTION 6. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6 SECTION 7. This Act shall take effect upon its approval.

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INTRODUCED BY:

A large, bold, handwritten signature in black ink is written over a horizontal line. The signature is highly stylized and cursive, appearing to read "Dumler, Steve".

**Report Title:**

Torts; Joint and Several Liability

**Description:**

Makes a tortfeasor liable for no more than the percentage of share of damages attributable to that individual or entity. Removes exceptions from law, thus abolishing joint and several liability.

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

