

JAN 25 2012

A BILL FOR AN ACT

RELATING TO TORT LIABILITY.

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

1 SECTION 1. The purpose of this Act is to amend section
2 663-10.9(4), Hawaii Revised Statutes, to define what constitutes
3 "similar circumstances" of a prior occurrence that are required
4 to show that an affected joint tortfeasor had reasonable prior
5 notice that would allow recovery of noneconomic damages and to
6 prohibit recovery in instances where there has been no
7 reasonable prior notice.

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

10 "**§663-10.9 Abolition of joint and several liability;**
11 **exceptions.** Joint and several liability for joint tortfeasors
12 as defined in section 663-11 is abolished except in the
13 following circumstances:

14 (1) For the recovery of economic damages against joint
15 tortfeasors in actions involving injury or death to
16 persons;

17 (2) For the recovery of economic and noneconomic damages
18 against joint tortfeasors in actions involving:

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- 1 (A) Intentional torts;
- 2 (B) Torts relating to environmental pollution;
- 3 (C) Toxic and asbestos-related torts;
- 4 (D) Torts relating to aircraft accidents;
- 5 (E) Strict and products liability torts; or
- 6 (F) Torts relating to motor vehicle accidents except
- 7 as provided in paragraph (4);
- 8 (3) For the recovery of noneconomic damages in actions,
- 9 other than those enumerated in paragraph (2),
- 10 involving injury or death to persons against those
- 11 tortfeasors whose individual degree of negligence is
- 12 found to be twenty-five per cent or more under section
- 13 663-31. Where a tortfeasor's degree of negligence is
- 14 less than twenty-five per cent, then the amount
- 15 recoverable against that tortfeasor for noneconomic
- 16 damages shall be in direct proportion to the degree of
- 17 negligence assigned; and
- 18 (4) For recovery of noneconomic damages in motor vehicle
- 19 accidents involving tort actions relating to the
- 20 maintenance and design of highways including actions
- 21 involving guardrails, utility poles, street and
- 22 directional signs, and any other highway-related

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1 device upon a showing that the affected joint
2 tortfeasor was given reasonable prior notice of a
3 prior occurrence under similar circumstances to the
4 occurrence upon which the tort claim is based. [~~In~~
5 ~~actions in which the affected joint tortfeasor has not~~
6 ~~been shown to have had such reasonable prior notice,~~
7 ~~the recovery of noneconomic damages shall be as~~
8 ~~provided in paragraph (3).]~~ For purposes of this
9 paragraph, "similar circumstances" means: (A) at the
10 same location; (B) involving the same highway-related
11 device or condition alleged to have caused the
12 occurrence; and (C) the condition of the roadway at
13 the time of the prior occurrence is in a substantially
14 similar condition as at the time of the occurrence
15 upon which the tort claim is based;
16 (5) Provided, however, that joint and several liability
17 for economic and noneconomic damages for claims
18 against design professionals, as defined in chapter
19 672, and certified public accountants, as defined in
20 chapter 466, is abolished in actions not involving
21 physical injury or death to persons."

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1 SECTION 3. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: 

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BY REQUEST

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S.B. NO. 2721

Report Title:
Tort Liability

Description:
Clarifies the definition of "similar circumstances" concerning joint liability in certain motor vehicle accidents.

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

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO TORT LIABILITY.

PURPOSE: To amend section 663-10.9(4), Hawaii Revised Statutes, to define, in tort actions relating to the maintenance and design of highways, what constitutes "similar circumstances" of a prior occurrence in order to find that the affected joint tortfeasor was given reasonable prior notice that would allow recovery of noneconomic damages. This bill also would prohibit recovery in instances where there has been no reasonable prior notice of a prior occurrence under similar circumstances.

MEANS: Amend section 663-10.9, Hawaii Revised Statutes.

JUSTIFICATION: 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. By including a definition of "similar circumstances," the parties, the courts and the triers of fact will have clear direction as to when joint and several liability will apply and when noneconomic damages can be recovered in motor vehicle accidents.

Section 663-10.9(4) currently also provides for the recovery of noneconomic damages even without a showing of reasonable prior notice or a prior occurrence. This bill is intended to amend section 663-10.9(4) to prohibit recovery in tort cases involving highway maintenance and design where there have been no prior similar occurrences. 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: Where the State is a defendant, 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: Where the State is a defendant, 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 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.