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## A BILL FOR AN ACT

RELATING TO MEDICAL MALPRACTICE.

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

1           SECTION 1. The legislature finds that Hawaii is facing a  
2 critical physician shortage. According to the 2018 report from  
3 the Hawaii Physician Workforce Assessment Project, the State is  
4 facing a statewide shortage of seven hundred ninety-seven  
5 physicians, with the largest shortage of two hundred sixty-three  
6 physicians found in the area of primary care. This shortfall is  
7 projected to worsen with the increased demand for health care  
8 from an aging population and the retirement of an aging  
9 physician population, with particular access to care issues in  
10 rural areas of Oahu and on the neighbor islands. Even with  
11 team-based care practices using other health care providers to  
12 help deliver primary care, physicians trained in primary care  
13 will be needed to help coordinate services and appropriate care  
14 referrals. The need to educate and train, as well as retain,  
15 more doctors to care for the State's residents is a critical key  
16 component to meeting the ongoing health care needs of Hawaii's  
17 communities.



1 Many Hawaii citizens are unable to obtain timely and  
2 appropriate health care due to shortages of primary health care  
3 providers in the State. These shortages threaten individual  
4 health and cumulatively affect the State's health care costs. A  
5 significant barrier to increasing the pool of health care  
6 providers is the exposure of post-graduate medical or resident  
7 physicians to medical malpractice litigation. Resident  
8 physicians are graduates of medical school who are pursuing  
9 postgraduate residencies or fellowships to become specialists in  
10 areas including family medicine, pediatrics, surgery, or  
11 psychiatry.

12 The increasing frequency at which resident physicians are  
13 named as parties in lawsuits alleging medical negligence  
14 discourages the State's medical school graduates from continuing  
15 their education in Hawaii and remaining in the State to  
16 practice. The post-medical school training resident physicians  
17 participate in is a necessary component to completing the  
18 requirements of a medical education, leading to full licensure  
19 and specialty board certification. Throughout their training,  
20 resident physicians participate in a nationally-recognized  
21 accredited program that includes the care of patients under the



1 supervision of a fully-licensed faculty or volunteer physician.  
2 Resident physicians are closely monitored and the treatment they  
3 provide is subject to continual review by a fully-licensed  
4 faculty or volunteer physician, as well as their educational  
5 program.

6 Accordingly, the purpose of this Act is to encourage  
7 postgraduate resident physicians to apply to Hawaii-based  
8 residency programs and remain in Hawaii by providing  
9 postgraduate resident physicians and fellows in a graduate  
10 medical education program with limited immunity while under the  
11 supervision of a fully-licensed faculty or volunteer physician.

12 SECTION 2. Chapter 663, Hawaii Revised Statutes, is  
13 amended by adding a new section to be appropriately designated  
14 and to read as follows:

15 "§663- Postgraduate resident physicians and fellows;  
16 limited liability. (a) Any postgraduate resident physician or  
17 fellow participating in a graduate medical education program and  
18 practicing under the direction of a physician duly licensed  
19 pursuant to chapter 453 shall not owe an independent duty of  
20 care to a patient, nor shall the resident or fellow be liable  
21 for any civil damages resulting from the person's acts or



1 omissions, except for such damages as may result from the  
2 person's gross negligence or wanton acts or omissions.

3 (b) Nothing in this section shall be construed to limit  
4 the supervising physician's liability for their own actions or  
5 for the actions of the postgraduate resident physician or  
6 fellow.

7 (c) For purposes of this section, "graduate medical  
8 education program" shall have the same meaning as in section  
9 304A-1701."

10 SECTION 3. This Act does not affect rights and duties that  
11 matured, penalties that were incurred, and proceedings that were  
12 begun before its effective date.

13 SECTION 4. New statutory material is underscored.

14 SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY:

JAN 18 2019



**Report Title:**

Medical Malpractice; Residents and Fellows; Limited Liability

**Description:**

Limits medical malpractice liability for residents and fellows in accredited residency and fellowship programs acting under the supervision of a licensed physician.

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

