

ACT 144

H. B. NO 2048-72

A Bill for an Act Relating to Torts, Amending Section 577-3 and Chapter 663 of the Hawaii Revised Statutes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 577-3 of the Hawaii Revised Statutes is amended by deleting from the next to the last line thereof the words "in law or in equity".

SECTION 2. Chapter 663 of the Hawaii Revised Statutes is amended as follows:

(a) Section 663-1 is amended by deleting from the sixth and seventh lines the words "domitae or ferae naturae" and inserting in lieu thereof "domestic or wild".

(b) Section 663-2 is amended by changing the word "action" in the next to the last line to read "actions".

(c) Section 663-3 is amended to read as follows:

"Sec. 663-3. Death by wrongful act. When the death of a person is caused by the wrongful act, neglect, or default of any person, the deceased's legal representative, or any of the persons hereinafter enumerated, may maintain an action against the person causing the death or against the person responsible for the death. The action shall be maintained on behalf of the persons hereinafter enumerated, except that the legal representative may recover on behalf of the estate the reasonable expenses of the deceased's last illness and burial.

In any action under this section, such damages may be given as under the circumstances shall be deemed fair and just compensation, with reference to the pecuniary injury and loss of love and affection, including (1) loss of society, companionship, comfort, consortium, or protection, (2) loss of marital care, attention, advice, or counsel, (3) loss of filial care or attention, or (4) loss of parental care, training, guidance, or education, suffered as a result of the death of the person by the surviving spouse, children, father, mother, and by any person wholly or partly dependent upon the deceased person. The jury or court sitting without jury shall allocate the damages to the persons entitled thereto in its verdict or judgment, and any damages recovered under this section, except for reasonable expenses of last illness and burial, shall not constitute a part of the estate of the deceased. Any action brought under this section shall be commenced within two years from the date of death of the injured person, except as otherwise provided."

(d) Section 663-5 is amended by changing the caption to read "Death of defendant, continuance of action"; and by deleting from the fourth and fifth lines the words "shall not abate, but".

(e) Section 663-6 is amended by deleting from the sixth and seventh lines the word "instituted" and inserting in lieu thereof "commenced"; and by deleting from the last line the words "whichever is earlier" and inserting in lieu thereof "except as otherwise provided".

(f) Section 663-7 is amended to read as follows:

"Sec. 663-7. Survival of cause of action. A cause of action arising out of a wrongful act, neglect, or default, except a cause of action for defamation or malicious prosecution, shall not be extinguished by reason of the death of

the injured person. The cause of action shall survive in favor of the legal representative of the person and any damages recovered shall form part of the estate of the deceased.”

(g) Section 663-12 is amended by changing the period at the end of the last paragraph to a comma and adding the following: “subject to section 663-17.”

(h) Section 663-17 is amended as follows:

“Sec. 663-17 Third-party practice; enforcement of right to contribution.

(a) A pleader may, as provided by the rules of court, bring in as a third-party defendant a person not a party to the action who is or may be liable to him or to the person claiming against him, for all or part of the claim asserted against him in the action, whether or not liability for the claim is admitted by the pleader. A third-party defendant is bound by the adjudication of the third-party plaintiff’s liability to the plaintiff as well as of his own liability to the plaintiff or to the third-party plaintiff.

(b) A pleader may either (1) state a cross-claim against a co-party any claim that the co-party is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant; or (2) move for judgment for contribution against any other joint judgment debtor, where in a single action a judgment has been entered against joint tort-feasors one of whom has discharged the judgment by payment or has paid more than his prorata share thereof. If relief can be obtained as provided in this paragraph no independent action shall be maintained to enforce the claim for contribution.

(c) As among joint tortfeasors who in a single action are adjudged to be such, the last paragraph of Section 663-12 applies only if the issue of proportionate fault is litigated between them by pleading in that action.”

(i) Section 663-31 is amended by changing the word “finding” in the first line of subsection (c) to read “findings”, and by deleting from the third line of subsection ‘c’ the word “verdict” and inserting in lieu thereof “award”.

SECTION 3. The amendments made by this Act shall not affect or repeal any other act passed at the same session of the legislature, and all such acts shall have full effect. So far as such acts conflict with any provision contained in this Act, they shall have the effect of subsequent acts.

SECTION 4. This Act upon its approval shall take effect on July 1, 1973.

(Approved May 30, 1972.)