

ACT 237

S.B. NO. 186

A Bill for an Act Relating to Tort Liability.

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

SECTION 1. Chapter 663, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§663- Tort liability for breach of contract; punitive damages. No person may recover damages, including punitive damages, in tort for a breach of a contract in the absence of conduct that:

- (1) Violated a duty that is independently recognized by principles of tort law; and
- (2) Transcended the breach of the contract.”

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

“§663-17 Third-party practice; enforcement of right to [contribution.] contribution; unnamed defendants and third party defendants. (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 the pleader or to the person claiming against the pleader, for all or part of the claim asserted against the pleader 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 the third-party defendant’s own liability to the plaintiff or to the third-party plaintiff.

(b) A pleader may either (1) state as a cross-claim against a coparty any claim that the coparty 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 tortfeasors one of whom has discharged the judgment by payment or has paid more than the joint tortfeasor’s pro rata 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.

(d) A pleader may name as parties to a lawsuit under fictitious names defendants or third-party defendants whose names or whose responsibility for the acts complained of the pleader has been unable to ascertain with reasonable certainty. The pleading shall set forth a description of any unidentified defendant or third-party defendant and all actions already undertaken in a diligent and good faith

effort to ascertain the true identity or responsibility of any unidentified defendant or third-party defendant. The pleader may later make known to the court the identity of a defendant or third-party defendant named as a party to the lawsuit under a fictitious name. For the purposes of statutes of limitation, later identified defendants or third-party defendants shall be considered to have been named as parties to the lawsuit on the date the pleading was filed first naming them under fictitious names. Parties shall exercise reasonable diligence in ascertaining the identity or responsibility of unnamed defendants or third-party defendants. The court may make any order that justice requires to protect any party from undue burden and expense or substantial prejudice in any further proceedings involving the later identified defendants or third-party defendants.”

SECTION 3. Section 607-14.5, Hawaii Revised Statutes, is amended to read as follows:

“§607-14.5 Attorneys’ fees and costs in civil actions. (a) In any civil action in this State where a party seeks money damages or injunctive relief, or both, against another party, and the case is subsequently decided, the court may, as it deems just, assess against either party, whether or not the party was a prevailing party, and enter as part of its order, for which execution may issue, a reasonable sum for attorneys’ fees[,] and costs, in an amount to be determined by the court upon a specific finding that all or a portion of the party’s claim or defense was frivolous[.] as provided in subsection (b).

(b) In determining the award of attorneys’ fees and costs and the amounts to be awarded, the court must find in writing that all or a portion of the claims or defenses made by the party are frivolous and are not reasonably supported by the facts and the law in the civil action. In determining whether claims or defenses are frivolous, the court may consider whether the party alleging that the claims or defenses are frivolous had submitted to the party asserting the claims or defenses a request for their withdrawal as provided in subsection (c). If the court determines that only a portion of the claims or defenses made by the party are frivolous, the court shall determine a reasonable sum for attorneys’ fees and costs in relation to the frivolous claims or defenses.

(c) A party alleging that claims or defenses are frivolous may submit to the party asserting the claims or defenses a request for withdrawal of the frivolous claims or defenses, in writing, identifying those claims or defenses and the reasons they are believed to be frivolous. If the party withdraws the frivolous claims or defenses within a reasonable length of time, the court shall not award attorney’s fees and costs based on those claims or defenses under this section.”

SECTION 4. Section 663-10.9, Hawaii Revised Statutes, is amended to read as follows:

“[[§663-10.9]] Abolition of joint and several liability; exceptions. Joint and several liability for joint tortfeasors as defined in section 663-11 is abolished except in the following circumstances:

- (1) For the recovery of economic damages against joint tortfeasors in actions involving injury or death to persons[.];
- (2) For the recovery of economic and noneconomic damages against joint tortfeasors in actions involving:
 - (A) Intentional torts;
 - (B) Torts relating to environmental pollution;
 - (C) Toxic and asbestos-related torts;
 - (D) Torts relating to aircraft accidents;

- (E) Strict and products liability torts; or
- (F) Torts relating to motor vehicle accidents except as provided in paragraph (4)[.];
- (3) For the recovery of noneconomic damages in actions, other than those enumerated in paragraph (2), involving injury or death to persons against those tortfeasors whose individual degree of negligence is found to be twenty-five per cent or more under section 663-31. Where a tortfeasor's degree of negligence is less than twenty-five per cent, then the amount recoverable against that tortfeasor for noneconomic damages shall be in direct proportion to the degree of negligence assigned[.]; and
- (4) For recovery of noneconomic damages in motor vehicle accidents involving tort actions relating to the maintenance and design of highways including actions involving guardrails, utility poles, street and directional signs, and any other highway-related device upon a showing that the affected joint tortfeasor was given reasonable prior notice of a prior occurrence under similar circumstances to the occurrence upon which the tort claim is based. In actions in which the affected joint tortfeasor has not been shown to have had such reasonable prior notice, the recovery of noneconomic damages shall be as provided in paragraph (3).
- (5) Provided, however, that joint and several liability for economic and noneconomic damages for claims against design professionals, as defined in chapter 672, and certified public accountants, as defined in chapter 466, is abolished in actions not involving physical injury or death to persons."

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

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

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

(Approved July 2, 1999.)

Note

- 1. Edited pursuant to HRS §23G-16.5.