

ACT 300

S.B. NO. 759

A Bill for an Act Relating to Tort Actions.

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 part II to be appropriately designated and to read as follows:

“§663- Release; joint tortfeasors; co-obligors; good faith settlement.

(a) A release, dismissal with or without prejudice, or a covenant not to sue or not to enforce a judgment that is given in good faith under subsection (b) to one or more joint tortfeasors, or to one or more co-obligors who are mutually subject to contribution rights, shall:

- (1) Not discharge any other party not released from liability unless its terms so provide;
- (2) Reduce the claims against the other party not released in the amount stipulated by the release, dismissal, or covenant, or in the amount of the consideration paid for it, whichever is greater; and
- (3) Discharge the party to whom it is given from all liability for any contribution to any other party.

This subsection shall not apply to co-obligors who have expressly agreed in writing to an apportionment of liability for losses or claims among themselves.

(b) For purposes of subsection (a), a party shall petition the court for a hearing on the issue of good faith of a settlement entered into by the plaintiff or other claimant and one or more alleged tortfeasors or co-obligors, serving notice to all other known joint tortfeasors or co-obligors. Upon a showing of good cause, the court may shorten the time for giving the required notice to permit the determination of the issue before the commencement of the trial of the action, or before the verdict or judgment if settlement is made after the trial has commenced.

The petition shall indicate the settling parties and the basis, terms, and settlement amount.

Except for a settlement that includes a confidentiality agreement regarding the case or the terms of the settlement, the notice, petition, and proposed order shall be served by certified mail, return receipt requested. Proof of service shall be filed with the court. Within twenty-five days of the mailing of the notice, petition, and proposed order, a nonsettling party may file an objection to contest the good faith of the settlement. If none of the nonsettling parties files an objection within the twenty-five days, the court may approve the settlement without a hearing. An objection by a nonsettling party shall be served upon all other parties. The party asserting a lack of good faith shall have the burden of proof on that issue.

Where a confidentiality agreement has been entered into regarding the claim or settlement terms, the court shall hear the matter in a manner consistent with preventing public disclosure of the agreement while providing other joint tortfeasors and co-obligors sufficient information to object to a proposed settlement.

(c) The court may determine the issue of good faith for purposes of subsection (a) on the basis of affidavits or declarations served with the petition under subsection (a), and any affidavits or declarations filed in response. In the alternative, the court, in its discretion, may receive other evidence at a hearing.

(d) A determination by the court that a settlement was made in good faith shall bar any other joint tortfeasor or co-obligor from any further claims against the settling tortfeasor or co-obligor for equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or comparative fault.

(e) A party aggrieved by a court determination on the issue of good faith may appeal the determination. The appeal shall be filed within twenty days after service of written notice of the determination, or within any additional time not exceeding twenty days as the court may allow.

(f) The running of any statute of limitations or other time limitations shall be tolled during the period of consideration by the court on the issue of good faith.

(g) The procedures, rights, and obligations of this section shall apply to a release, dismissal, or covenant given before, as well as after, a lawsuit has been filed and does not require the existence of a lawsuit.

(h) This section shall not apply to a release, dismissal with or without prejudice, or a covenant not to sue or not to enforce judgment given to a co-obligor on an alleged contract debt where the contract was made prior to January 1, 2002.’’

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

“**[[§663-10.5]]¹ Government entity as a tortfeasor; abolition of joint and several liability.** Notwithstanding [~~the² of~~] sections 663-11 to 663-13, 663-16, 663-17, and section 663-31, in any case where a government entity is determined to be a tortfeasor along with one or more other tortfeasors, the government entity shall be liable for no more than that percentage share of the damages attributable to the government entity.

For purposes of this section, “government entity” means any unit of government in this State, including the State and any county or combination of counties, department, agency, institution, board, commission, district, council, bureau, office, governing authority, or other instrumentality of state or county government, or corporation or other establishment owned, operated, or managed by or on behalf of this State or any county.

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

SECTION 3. Section 663-14, Hawaii Revised Statutes, is repealed.

SECTION 4. Section 663-15, Hawaii Revised Statutes, is repealed.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.³

SECTION 6. This Act shall apply to:

- (1) Any release, dismissal, or covenant given after this Act takes effect, regardless of the date of the occurrence of the underlying claim, except for claims arising out of a contract made prior to January 1, 2002; and
- (2) Contract claims where the contract was made on or after January 1, 2002.

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

(Approved June 28, 2001.)

Notes

1. So in original.
2. Prior to amendment “provisions” appeared here.
3. Edited pursuant to HRS §23G-16.5.