

A Bill for an Act Relating to Torts.

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

SECTION 1. The legislature finds that Hawaii's design professional firms engaged in work on highway projects are in a unique position compared to others involved in highway projects. The role of design professionals is minimal in scope, time, and economic benefit. The scope of the design professional's work is limited to the initial design of the highway, which is minimal in contrast to the construction and maintenance of highways. The time that design professionals are involved is also minimal and usually limited to the initial planning stage of the project. On the other hand, highway construction typically takes years and maintenance extends over many decades. Design professionals generally have no control over subsequent construction and future maintenance activities that occur long after their work has ended. Construction and maintenance costs similarly greatly exceed design costs. For virtually all small design firms, the liability risk far exceeds the financial compensation for highway projects. This Act recognizes these unique factors and affords appropriate relief.

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

“§663- Design professional liability; highways. (a) Any other law to the contrary notwithstanding, including but not limited to sections 663-10.9, 663-11 to 663-13, 663-16, 663-17, and 663-31, in any case involving tort claims relating to the design, construction, and maintenance of highways, where a design professional is determined to be a joint tortfeasor along with one or more other joint tortfeasors, and the degree of negligence of the design professional is ten per cent or less, including the vicarious liability of the design professional for the negligent acts or omissions of the officers and employees of the design professional, the liability of the design professional for more than the design professional's pro rata share of negligence shall not exceed the available policy limits of the design professional's professional liability coverage; provided that one of the following applies:

- (1) The contract amount for design professional services relating to the tort claim is \$500,000 or less and the design professional is covered for the claim by a professional liability insurance policy with limits of no less than \$1,000,000 per occurrence and \$1,000,000 in the aggregate; or
- (2) The contract amount for design professional services relating to the tort claim is \$1,000,000 or less and the design professional is covered for the claim by a professional liability insurance policy with limits of no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

(b) This section shall not apply to any design professional with a gross annual revenue of \$10,000,000 or more during any of the three calendar years immediately preceding the effective date of the contract for design professional services relating to the tort claim. Information produced pursuant to this section relating to gross revenue shall be confidential and used only for purposes of this section unless otherwise ordered by the court.

- (c) For purposes of this section:

“Available policy limits” means the remaining occurrence or aggregate policy limits available after reduction for prior claim payments made under the applicable professional liability insurance policy.

“Contract amount” means the maximum charges permitted under the contract; provided that if two or more design professional firms share in a contract, the contract amount shall be the share of maximum charges permitted for the design professional against which the claim is asserted.

“Design professional” means a professional engineer, architect, surveyor, or landscape architect licensed under chapter 464.”

SECTION 3. This Act shall apply prospectively only and shall not affect events, acts, or omissions that occur, rights that vest or mature, or proceedings begun, before its effective date.

SECTION 4. New statutory material is underscored.¹

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

(Became law on July 15, 2009, without the governor’s signature, pursuant to Art. III, §16, State Constitution.)

Note

1. Edited pursuant to HRS §23G-16.5.