
A BILL FOR AN ACT

RELATING TO TORTS.

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

1 SECTION 1. Chapter 671, Hawaii Revised Statutes, is
2 amended by adding five new sections to be appropriately
3 designated and to read as follows:

4 "§671-A Limitation on noneconomic damages.

5 Notwithstanding section 663-8.7, noneconomic damages as defined
6 in section 663-8.5 shall be limited in medical tort actions to a
7 maximum award of \$250,000.

8 §671-B Attorney's fees. (a) An attorney shall not
9 contract for or collect a contingency fee for representing any
10 person seeking damages in connection with an action for a
11 medical tort in excess of the following limits:

12 (1) Forty per cent of the first \$50,000 recovered;

13 (2) Thirty-three-and-one-third per cent of the next
14 \$50,000 recovered;

15 (3) Twenty-five per cent of the next \$500,000 recovered;

16 and

1 (4) Fifteen per cent of any amount on which the recovery
2 exceeds \$600,000.

3 The limitations shall apply regardless of whether the recovery
4 is by settlement, arbitration, or judgment, or whether the
5 person for whom the recovery is made is a responsible adult, an
6 infant, or a person of unsound mind.

7 (b) For purposes of this section, "recovered" means the
8 net sum recovered after deducting any disbursements or costs
9 incurred in connection with prosecution or settlement of the
10 claim. Costs of medical care incurred by the plaintiff and the
11 attorney's office overhead costs or charges are not deductible
12 disbursements or costs for such purpose.

13 **§671-C Assessing percentage of negligence.** Upon request
14 of any nonsettling healthcare provider against whom a plaintiff
15 alleges a medical tort causing injury, the trier of fact shall
16 consider, in assessing any percentage of negligence or other
17 fault, the negligence or other fault of all alleged parties,
18 including the negligence or other fault of any person or entity
19 who has entered into a settlement with the plaintiff for the
20 claimed damages, even when the settlement has been determined to
21 have made in good faith, pursuant to section 663-15.5.

1 §671-D Proportionate allocation of economic damages. The
2 amount of economic damages allocated to a healthcare provider in
3 a medical tort action shall be based upon the healthcare
4 provider's proportionate percentage of negligence or other
5 fault.

6 §671-E Noneconomic damages. (a) If the trier of fact
7 renders a verdict for the plaintiff in a medical tort action,
8 the court shall enter judgment of liability against each
9 defendant healthcare provider in accordance with the percentage
10 of negligence or other fault for compensatory damages that is
11 attributed to the healthcare provider by the trier of fact.

12 (b) Where a healthcare provider's degree of negligence is
13 less than twenty-five per cent, then the amount recoverable
14 against that healthcare provider for noneconomic damages shall
15 be in direct proportion to the degree of the negligence
16 assigned.

17 (c) Judgment shall not be entered against any healthcare
18 provider who has not been named a party or has been released,
19 dismissed, or otherwise discharged as a party pursuant to
20 section 663-15.5."

21 SECTION 2. Section 663-11, Hawaii Revised Statutes, is
22 amended to read as follows:

1 **"§663-11 Joint tortfeasors defined.** For the purpose of
2 this part the term "joint tortfeasors" means two or more persons
3 jointly or severally liable in tort for the same injury to
4 person or property, whether or not judgment has been recovered
5 against all or some of them[-], except as provided for
6 healthcare providers in chapter 671."

7 SECTION 3. Section 671-1, Hawaii Revised Statutes, is
8 amended to read as follows:

9 **"§671-1 Definitions.** As used in this chapter:

10 ~~[(1)]~~ "Health care provider" or "healthcare provider"
11 means a physician or surgeon licensed under chapter 453, a
12 physician and surgeon licensed under chapter 460, a podiatrist
13 licensed under chapter 463E, a health care facility as defined
14 in section 323D-2, a chiropractor licensed under chapter 442, a
15 dentist licensed under chapter 448, a dental hygienist licensed
16 under chapter 447, an acupuncture practitioner licensed under
17 chapter 436E, a massage therapist licensed under chapter 452, a
18 nurse licensed under chapter 457, an occupational therapist
19 licensed under chapter 457G, an optometrist licensed under
20 chapter 459, a pharmacist licensed under chapter 461, a physical
21 therapist licensed under chapter 461J, a psychologist licensed
22 under chapter 465, a marriage and family therapist licensed

1 under chapter 451J, a dietitian licensed under chapter 448B, a
2 radiologic technologist licensed under chapter 466J, a speech
3 pathologist or audiologist licensed under chapter 468E, a
4 veterinarian licensed under chapter 471, and the employees and
5 legal representatives of any of them. Health care provider
6 shall not mean any nursing institution or nursing service
7 conducted by and for those who rely upon treatment by spiritual
8 means through prayer alone, or employees of such institution or
9 service.

10 ~~[-(2)] "Medical tort" means [professional negligence, the~~
11 ~~rendering of professional service without informed consent, or an~~
12 ~~error or omission in professional practice, by a health care~~
13 ~~provider, which proximately causes death, injury, or other damage~~
14 ~~to a patient.]~~ a negligent act or omission to act by a healthcare
15 provider in the rendering of professional services, or the
16 rendering of professional service by a healthcare provider
17 without informed consent, which act or omission or rendering of
18 service without informed consent is the proximate cause of a
19 personal injury or wrongful death, provided that such services
20 are within the scope of services for which the provider is
21 licensed and which are not within any restriction imposed by the
22 licensing agency or licensed hospital."

JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO TORTS.

PURPOSE: To lower medical malpractice insurance premiums by adopting legislation that directly affects elements impacting medical malpractice insurance rates.

MEANS: Add five new sections to chapter 671 and amend sections 663-11 and 671-1, Hawaii Revised Statutes.

JUSTIFICATION: The current healthcare liability system is a costly and ineffective mechanism for resolving healthcare liability claims and compensating injured patients. There are no for-profit insurers licensed in Hawaii, and premium rates from nonprofit insurers have increased significantly, especially for medical specialties. The rise in medical malpractice insurance premiums has economically inhibited the ability of doctors to provide necessary services in rural areas and on the neighbor islands. Reform is required to address the adverse impact of the high cost of medical malpractice insurance on patient access to healthcare services, patient care, and cost-efficient healthcare in rural areas and the neighbor islands.

This bill:

1. Limits noneconomic damages in medical tort actions to a maximum award of \$250,000;
2. Establishes limits for contingent fees that may be contracted by attorneys for medical tort actions, as follows:
 - A. 40 percent of the first \$50,000 recovered;

- B. 33-1/3 percent of the next \$50,000 recovered;
 - C. 25 percent of the next \$500,000 recovered; and
 - D. 15 percent of any amount of recovery exceeding \$600,000;
3. Defines "recovered" as the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution or settlement of the claim;
 4. In assessing any percentage of negligence or other fault, requires the trier of fact to consider the negligence or fault of all alleged parties, including those who have entered into a settlement, upon request of any nonsettling defendant healthcare provider;
 5. Requires economic damages to be allocated to a healthcare provider based upon the healthcare provider's proportionate percentage of negligence or other fault;
 6. Requires the trier of fact, where a verdict is rendered for the plaintiff, to enter judgment of liability against each defendant healthcare provider in accordance with the percentage of negligence or other fault for compensatory damages attributed to the provider by the trier of fact; provided that judgment shall not be entered against a healthcare provider who is not a party or who has been released, dismissed, or discharged as a party;
 7. Includes in the definition of "healthcare provider", chiropractors, dentists, dental hygienists, acupuncture

practitioners, massage therapists, nurses, occupational therapists, optometrists, pharmacists, physical therapists, psychologists, marriage and family therapists, dietitians, radiologic technologists, speech pathologists or audiologists, and veterinarians, and their employees and legal representatives; and

- 8. Redefines "medical tort" to mean a negligent act or omission to act by a healthcare provider in the rendering of professional services, or the rendering of professional service by a healthcare provider without informed consent, which act or omission or rendering of service without informed consent is the proximate cause of a personal injury or wrongful death, provided that such services are within the scope of services for which the provider is licensed and which are not within any restriction imposed by the licensing agency or licensed hospital.

Impact on the public: The public interest is served because this bill may improve the availability of healthcare services and the fairness and cost-effectiveness of the healthcare liability system.

Impact on the department and other agencies:
None.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION:

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: July 1, 2007.