

---

---

# A BILL FOR AN ACT

RELATING TO TORTS.

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

1           SECTION 1. The increasing cost of malpractice insurance  
2 and escalating monetary awards in medical malpractice lawsuits  
3 are major factors in the current physician shortage experienced  
4 by the State of Hawaii and the neighbor islands in particular.  
5 Malpractice insurance premiums have skyrocketed for Hawaii  
6 physicians, with physicians in high-risk specialties such as  
7 surgery and obstetrics, experiencing the highest increase.  
8 Monetary awards in malpractice lawsuits are escalating,  
9 especially with respect to awards for non-economic damages.

10           As a result of the malpractice situation, many physicians  
11 are choosing to retire early, limit their practice, or refrain  
12 from practicing in Hawaii. Medical students are avoiding  
13 medical specialties that have a high risk of medical malpractice  
14 exposure. Defensive medicine may also be practiced, where a  
15 physician orders tests and procedures to protect themselves from  
16 malpractice liability. Diminishing access to health care is of  
17 particular concern in rural areas, such as the neighbor islands,



1 where relatively few doctors and fewer specialists and sub-  
2 specialists continue to practice.

3 The legislature finds that to address this critical  
4 situation, a patient's right to recover non-economic damages for  
5 injuries suffered as a result of health care negligence must be  
6 balanced against the State's interest in ensuring access to  
7 health care services.

8 The purpose of this Act is to place a cap on the amount of  
9 non-economic damages that may be recovered in medical  
10 malpractice actions in Hawaii, that is contingent on the  
11 compliance of all insurers providing professional liability  
12 insurance in Hawaii with the premium rate limitations set by  
13 this Act.

14 SECTION 2. Chapter 671, Hawaii Revised Statutes, is  
15 amended by adding a new section to be appropriately designated  
16 and to read as follows:

17 **"§671- Limitation on non-economic damages in medical**  
18 **tort claims. Non-economic damages recoverable in a medical tort**  
19 **claim against a health care provider shall be limited to a**  
20 **maximum award of \$500,000; provided that the health care**  
21 **provider maintains a minimum of \$1,000,000 of professional**  
22 **liability coverage."**



1 SECTION 3. This Act does not affect rights and duties that  
2 matured, penalties that were incurred, and proceedings that were  
3 begun, before its effective date.

4 SECTION 4. New statutory material is underscored.

5 SECTION 5. This Act shall take effect upon its approval;  
6 provided that this Act shall be repealed on the earlier of July  
7 1, 2015, or upon the failure of any insurer providing  
8 professional liability insurance for a health care provider in  
9 the state to meet the following requirements:

10 (1) Between July 1, 2007 and December 31, 2007, no insurer  
11 providing professional liability insurance for a  
12 health care provider in the state may increase the  
13 professional liability insurance rates unless a rate  
14 increase is required to avoid imminent insolvency or  
15 provide a fair rate of return.

16 (2) Beginning January 1, 2008, all insurers providing  
17 professional liability insurance for health care  
18 providers in the state shall implement a premium rate  
19 that is the lower of the following:

20 (A) Not greater than the rate in effect on January 1,  
21 2005; or



1 (B) Seventy-five per cent of the lowest rate in  
 2 effect between January 1, 2005 and December 31,  
 3 2007, unless to do so would cause imminent  
 4 insolvency or fail to provide a fair rate of  
 5 return.

6 (3) Beginning January 1, 2009, no insurer providing  
 7 professional liability insurance for a health care  
 8 provider may implement any rate increase greater than  
 9 two and one half per cent in any twelve month period,  
 10 unless a rate increase greater than two and one half  
 11 per cent is required to avoid imminent insolvency or  
 12 provide a fair rate of return.

13 Any person may seek a declaratory judgment as to whether an  
 14 insurer has failed to comply with paragraph 1, 2, or 3 by  
 15 bringing an action against the insurer in the circuit court of  
 16 the county in which the petitioner resides or has its principal  
 17 place of business.

18

INTRODUCED BY: John Green MD

Mr. [Signature]  
Raymond [Signature]  
Cindy [Signature]  
John M. [Signature]



**Report Title:**

Tort Reform; Medical Malpractice; Insurance; Non-economic Damages

**Description:**

Limits non-economic damages in medical tort actions contingent on compliance with premium rate caps by insurers providing professional liability insurance in Hawaii. Sunsets on the earlier of the date on which an insurer does not comply with the premium rate caps, or July 1, 2015.

