

JAN 18 2008

A BILL FOR AN ACT

RELATING TO TORT ACTIONS.

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

1 SECTION 1. Section 663-10.9, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§663-10.9 Abolition of joint and several liability;**

4 **exceptions.** (a) Joint and several liability for joint
5 tortfeasors as defined in section 663-11 is abolished except [~~in~~
6 ~~the following circumstances~~]:

7 (1) For the recovery of economic damages against joint
8 tortfeasors in actions involving injury or death to
9 persons;

10 (2) For the recovery of economic and noneconomic damages
11 against joint tortfeasors in actions involving:

12 (A) Intentional torts;

13 (B) Torts relating to environmental pollution;

14 (C) Toxic and asbestos-related torts;

15 (D) Torts relating to aircraft accidents;

16 (E) Strict and products liability torts; or



1 (F) Torts relating to motor vehicle accidents except
2 as provided in paragraph (4);

3 (3) For the recovery of noneconomic damages in actions,
4 other than those enumerated in paragraph (2),
5 involving injury or death to persons against those
6 tortfeasors whose individual degree of negligence is
7 found to be twenty-five per cent or more under section
8 663-31. Where a tortfeasor's degree of negligence is
9 less than twenty-five per cent, then the amount
10 recoverable against that tortfeasor for noneconomic
11 damages shall be in direct proportion to the degree of
12 negligence assigned; and

13 (4) For recovery of noneconomic damages in motor vehicle
14 accidents involving tort actions relating to the
15 maintenance and design of highways, including actions
16 involving guardrails, utility poles, street and
17 directional signs, and any other highway-related
18 device [~~upon a showing~~]; provided that the affected
19 joint tortfeasor was given reasonable prior notice of
20 a prior occurrence under similar circumstances to the
21 occurrence upon which the tort claim is based. In
22 actions in which the affected joint tortfeasor has not



1 been shown to have had [~~such~~] reasonable prior notice,
2 the recovery of noneconomic damages shall be as
3 provided in paragraph (3).

4 [~~(5) Provided, however, that joint~~]

5 (b) Joint and several liability for economic and
6 noneconomic damages for [~~claims~~] actions against design
7 professionals[~~r~~] as defined in chapter [~~672r~~] 672B-1, and
8 certified public accountants[~~r~~] as defined in chapter 466, is
9 abolished [~~in~~]; provided that the actions do not [involving]
10 involve physical injury or death to persons[~~r~~]; provided further
11 that for recovery of noneconomic damages in actions against
12 design professionals involving injury or death to persons
13 relating to the maintenance and design of highways, the recovery
14 of noneconomic damages shall be in direct proportion to the
15 degree of negligence assigned unless:

16 (1) The affected tortfeasor was given reasonable prior
17 notice as described in subsection (a); or

18 (2) The affected torfeasor's individual degree of
19 negligence is found to be twenty-five per cent or more
20 under section 663-31.

21 (c) For purposes of subsection (b), the liability of any
22 design professional shall include the vicarious liability for



1 the acts or omissions of the design professional's officers and
2 employees."

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

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

8 SECTION 4. This Act shall take effect upon its approval.

9

INTRODUCED BY: Norman Sakamich

Report Title:

Joint and Several Liability; Design Professionals

Description:

Limits the recovery of noneconomic damages in actions against design professionals involving injury or death to persons relating to the maintenance and design of highways, with exceptions.

