1

A BILL FOR AN ACT

RELATING TO MEDICAL LIABILITY.

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

1	PART I
2	SECTION 1. Section 671-1, Hawaii Revised Statutes, is
3	amended to read as follows:
4	"§671-1 Definitions. As used in this chapter:
5	"Catastrophic injuries" means irreversible, life-altering
6	injuries to an individual such as anoxic brain injury, permanent
7	paralysis, or other conditions as determined by the department
8	of health.
9	$\left[\frac{1}{1}\right]$ "Health care provider" means a physician or surgeon
10	licensed under chapter 453, [a physician and surgeon licensed
11	under chapter 460,] a podiatrist licensed under chapter 463E, a
12	health care facility as defined in section 323D-2, and the
13	employees of any of them $[-]$; provided that for purposes of
14	part of this chapter, the term shall include the legal
15	representatives of the health care provider. Health care
16	provider shall not mean any nursing institution or nursing
17	service conducted by and for those who rely upon treatment by



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spiritual means through prayer alone, or employees of such 1 institution or service. 2 [(2)] "Medical tort" means: 3 4 (1) Except as otherwise provided in paragraph (2), 5 professional negligence, the rendering of professional 6 service without informed consent, or an error or 7 omission in professional practice, by a health care 8 provider, which proximately causes death, injury, or 9 other damage to a patient [-]; or 10 (2) For purposes of part of this chapter, a negligent 11 act or omission to act by a health care provider in 12 rendering professional services, or the provision of professional service by a health care provider without 13 14 informed consent, which service is within the scope of 15 services for which the provider is licensed and is not 16 within any restriction imposed by the licensing agency or licensed hospital, and which act or omission or 17 18 provision of service without informed consent occurs 19 in a county with a population of less than five 20 hundred thousand and is the proximate cause of a personal injury or wrongful death. 21



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1	"Noneconomic damages" has the same meaning provided in		
2	section 663-8.5."		
3	PART II		
4	SECTION 2. Chapter 671, Hawaii Revised Statutes, is		
5	amended by adding a new part to be appropriately designated and		
6	to read as follows:		
7	"PART . MEDICAL LIABILITY IN CERTAIN COUNTIES		
8	§671-A Application of part. This part shall apply to each		
9	county with a population of less than five hundred thousand and		
10	shall supersede any law of the State or its political		
11	subdivisions to the contrary.		
12	§671-B Limitation on noneconomic damages. (a) In medical		
13	tort actions under this part, noneconomic damages shall be		
14	limited to a maximum award of:		
15	(1) \$500,000 for high-risk medical specialties as		
16	designated by the department of health; and		
17	(2) \$250,000 for any medical specialty other than a high-		
18	risk medical specialty;		
19	provided that in cases involving catastrophic injuries,		
20	noneconomic damages shall be limited to a maximum award of		
21	\$3,000,000.		



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1	§671-C Assessing percentage of negligence. Upon request		
2	of any nonsettling health care provider against whom a plaintiff		
3	alleges a medical tort that has caused injury, the trier of fact		
4	shall consider, in assessing any percentage of negligence or		
5	other fault, the negligence or other fault of all parties,		
6	including the negligence or other fault of any person or entity		
7	who has entered into a settlement with the plaintiff for the		
8	claimed damages, even when the settlement has been determined to		
9	have been made in good faith, pursuant to section 663-15.5.		
10	§671-D Economic damages. (a) A trier of fact may render		
11	a verdict for the plaintiff in a medical tort action that		
12	includes economic damages.		
13	(b) For the purposes of this section, "economic damages"		
14	include:		
15	(1) Past and future medical expenses;		
16	(2) Loss of past and future earnings;		
17	(3) Loss of use of property;		
18	(4) Cost of repair or replacement;		
19	(5) Cost of obtaining domestic services;		
20	(6) Loss of employment; and		
21	(7) Loss of business and employment opportunities.		



§671-E Proportionate allocation of economic damages. The
 amount of economic damages allocated to a health care provider
 in a medical tort action shall be based upon the health care
 provider's proportionate percentage of negligence or other
 fault.

§671-F Noneconomic damages. (a) If the trier of fact
renders a verdict for the plaintiff in a medical tort action,
the court shall enter judgment of liability against each
defendant health care provider for noneconomic damages in
accordance with the percentage of negligence or other fault for
economic damages that is attributed to the health care provider
by the trier of fact.

(b) Judgment shall not be entered against any health care
provider who has not been named a party or has been released,
dismissed, or otherwise discharged as a party pursuant to
section 663-15.5."

17 SECTION 3. Section 663-8.7, Hawaii Revised Statutes, is18 amended to read as follows:

"[4] \$663-8.7[4] Limitation on pain and suffering. Damages
recoverable for pain and suffering as defined in section 663-8.5
shall be limited to a maximum award of \$375,000; provided that
this limitation shall not apply to [tort]:



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1	(1) Tort actions enumerated in section 663-10.9(2) [$-$]; and			
2	(2) Medical tort actions under part of chapter 671."			
3	SECTION 4. Section 663-11, Hawaii Revised Statutes, is			
4	amended to read as follows:			
5	"§663-11 Joint tortfeasors defined. For the purpose of			
6	this part, the term "joint tortfeasors" means two or more			
7	persons jointly or severally liable in tort for the same injury			
8	to person or property, whether or not judgment has been			
9	recovered against all or some of them $[-]$, except as provided for			
10	health care providers in part of chapter 671."			
11	PART III			
12	SECTION 5. By December 31, 2010, the department of health			
13	shall adopt rules in accordance with chapter 91:			
14	(1) Designating the medical specialties that are high-risk			
15	for purposes of section 671-B in section 2 of this			
16	Act; and			
17	(2) Defining "catastrophic injuries" for purposes of the			
18	new definition of that term established in section 1			
19	of this Act.			
	In adopting these rules, the department shall:			

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1	(1)	Consult with medical malpractice insurance companies		
2		and representatives of medical specialty societies in		
3		the state; and		
4	(2)	Determine high-risk medical specialties based on		
5		statewide data for each specialty, including data		
6		regarding medical tort claims, judgments, awards,		
7		settlements, and medical malpractice insurance		
8		premiums.		
9	SECT	ION 6. This Act does not affect rights and duties that		
10	matured,	penalties that were incurred, and proceedings that were		
11	begun, before its effective date.			
12	SECTION 7. In codifying the new sections added by section			
13	2 of this Act, the revisor of statutes shall substitute			
14	appropriate section numbers for the letters used in designating			
15	the new sections in this Act.			
16	SECTION 8. Statutory material to be repealed is bracketed			
17	and stric	ken. New statutory material is underscored.		
18	SECT	ION 9. This Act shall take effect on January 1, 2011,		
19	and shall	be repealed on December 31, 2015; provided that:		
20	(1)	Section 5 of this Act shall take effect upon the		
21		approval of this Act; and		



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1	(2)	Parts I and II of this Act shall apply to injuries and
2		deaths occurring after the effective date of this Act.
3		1
		INTRODUCED BY:

JAN 2 8 2009





Report Title:

Medical Tort Liability; Noneconomic Damages

Description:

Addresses medical malpractice insurance costs by capping noneconomic damages at \$500,000 for high-risk medical specialties and \$250,000 for all other specialties, establishing a limit of \$3,000,000 for noneconomic damages determined by the court to be for catastrophic injuries, and requiring that economic damages be allocated based upon proportionate percentage of negligence. Sunsets December 31, 2015.

