
A BILL FOR AN ACT

RELATING TO ABOLITION OF JOINT AND SEVERAL LIABILITY FOR
GOVERNMENT ENTITIES IN HIGHWAY-RELATED CIVIL ACTIONS.

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

1 SECTION 1. The purpose of this Act is to abolish joint and
2 several liability for government entities in claims and cases
3 relating to the maintenance and design of highways including
4 actions involving guardrails, utility poles, street and
5 directional signs, and any other highway-related device under
6 chapter 663, Hawaii Revised Statutes, so that government
7 entities would only be liable for the percentage share of the
8 damages actually attributable to the government entities in
9 applicable claims and cases.

10 SECTION 2. Section 663-10.5, Hawaii Revised Statutes, is
11 amended by amending subsection (a) to read as follows:

12 "(a) Any other law to the contrary notwithstanding,
13 including but not limited to sections 663-10.9, 663-11 to 663-
14 13, 663-16, 663-17, and 663-31, in any case where a government
15 entity is determined to be a tortfeasor along with one or more
16 other tortfeasors, the government entity shall be liable for no
17 more than that percentage share of the damages attributable to

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1 the government entity[, ~~provided that joint and several~~
2 ~~liability shall be retained for tort claims relating to the~~
3 ~~maintenance and design of highways pursuant to section 663-~~
4 ~~10.9]~~."

5 SECTION 3. Section 663-10.9, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "§663-10.9 Abolition of joint and several liability;
8 exceptions. Joint and several liability for joint tortfeasors
9 as defined in section 663-11 is abolished except in the
10 following circumstances:

- 11 (1) For the recovery of economic damages against joint
12 tortfeasors in actions involving injury or death to
13 persons;
- 14 (2) For the recovery of economic and noneconomic damages
15 against joint tortfeasors in actions involving:
- 16 (A) Intentional torts;
 - 17 (B) Torts relating to environmental pollution;
 - 18 (C) Toxic and asbestos-related torts;
 - 19 (D) Torts relating to aircraft accidents;
 - 20 (E) Strict and products liability torts; or
 - 21 (F) Torts relating to motor vehicle accidents [~~except~~
22 ~~as provided in paragraph (4)]~~; and

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

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

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1 ~~the recovery of noneconomic damages shall be as~~
2 ~~provided in paragraph (3).~~

3 ~~(5) Provided,~~

4 provided, however, that joint and several liability for economic
5 and noneconomic damages for claims against design professionals,
6 as defined in [~~chapter 672,~~] section 663-10.98, and certified
7 public accountants, as defined in chapter 466, is abolished in
8 actions not involving physical injury or death to persons."

9 SECTION 4. 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 5. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 6. This Act shall take effect upon its approval

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INTRODUCED BY:

Heidi K. Nulman

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BY REQUEST

JAN 21 2025

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Report Title:

Joint and Several Liability; Repeal; Government Entities;
Highway-Related Civil Actions

Description:

Amends sections 663-10.5 and 663-10.9, HRS, to abolish joint and several liability for government entities in claims and cases relating to the maintenance and design of highways under chapter 663, HRS, so that government entities would be liable only for the percentage share of the damages actually attributable to them.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO ABOLITION OF JOINT AND SEVERAL LIABILITY FOR GOVERNMENT ENTITIES IN HIGHWAY-RELATED CIVIL ACTIONS.

PURPOSE: To abolish joint and several liability for government entities in claims and cases relating to the maintenance and design of highways including actions involving guardrails, utility poles, street and directional signs, and any other highway-related device under chapter 663, Hawaii Revised Statutes (HRS), so that government entities would only be liable for the percentage share of the damages actually attributable to the government entities in applicable claims and cases.

MEANS: Amend sections 663-10.5(a) and 663-10.9, HRS.

JUSTIFICATION: Section 663-10.5, HRS, was originally enacted to protect public funds by preventing government entities from being held jointly and severally liable for the entire damages in cases in which the government entities bore minimal responsibility for causing those damages. However, in 2006, this statute was amended to carve out and insert an exception for tort claims relating to the maintenance and design of highways pursuant to section 663-10.9, HRS, thereby exposing governmental entities to joint and several liability for certain claims again.

The return of joint and several liability for government entities for tort claims relating to the maintenance and design of highways has undermined the original intent of section 663-10.5, HRS, and has since resulted in an unfair burden to the State's taxpayers as liabilities for the State have cost the State millions of dollars more than

the State would otherwise have had to pay if limited by its proportionate share of fault.

This bill is needed to restore the original intent of section 663-10.5, HRS, by eliminating the disparate treatment of claims relating to highways.

Section 663-10.9(4), HRS, currently allows for recovery of noneconomic damages in motor vehicle accident tort claims relating to the maintenance and design of highways upon a showing that the affected joint tortfeasor was given reasonable prior notice of a prior occurrence under similar circumstances. However, the existence of a single prior occurrence is not a sufficient trigger to effect maintenance or redesign of a highway. Normally, government entities, such as the State, employ engineering analyses and methodologies that are data driven and monitor for expected as well as excessive crash frequency to evaluate their transportation operations. The analyses and methodologies include those summarized by the American Association of State Highway and Transportation Officials Highway Safety Manual and Manual on Uniform Traffic Control Devices. This bill will allow the State to continue using accurate, fair, and relevant indicators to maintain and design highways and operate, monitor, or evaluate those highways for remediation, and it will limit the State's liability to a proportionate share of its fault in highway-related civil actions.

The amendments to section 663-10.9(5), HRS, also provide a housekeeping update to correctly reflect the location of the definition of "design professionals" in the HRS.

Impact on the public: This bill will ease the burden on the State and its taxpayers by ensuring that the State is no longer overburdened with paying excessive judgments

and settlements by being held jointly and severally liable in highway related cases where the majority of the fault is with another tortfeasor.

Impact on the department and other agencies:
This bill will protect the general fund from excessive judgments for tort claims against the State relating to highway maintenance and design, making the State responsible only for its proportionate share of damages.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED
AGENCIES: Department of Transportation and the
Judiciary.

EFFECTIVE DATE: Upon approval.