

# A BILL FOR AN ACT

## RELATING TO CLAIMS AGAINST HEALTH CARE PROVIDERS.

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

1 PART I

2 SECTION 1. The legislature finds that patients in the  
3 State, particularly the most vulnerable residents, deserve  
4 strong protections and accountability in health care. At  
5 present, the State lacks a uniform reporting system that ensures  
6 timely notification of complaints and claims against health care  
7 professionals to licensing boards and regulators. Without  
8 consistent reporting, oversight agencies are limited in their  
9 ability to act swiftly to safeguard the public.

10 The legislature further finds that extending the statute of  
11 limitations and tolling conditions for medical torts and raising  
12 the cap on damages for pain and suffering in medical tort  
13 actions provides patients with fairer access to health care  
14 services and better reflects the serious impact of medical  
15 injuries.

16 The legislature notes that other jurisdictions, including  
17 the District of Columbia, Maine, Massachusetts, and Nevada, have



1 enacted statutory protections that strengthen patient safety and  
2 health care provider accountability. By adopting similar  
3 reforms, the State will bring its laws in line with these states  
4 and reaffirm its commitment to safeguarding residents through  
5 greater transparency, oversight, and fairness in medical tort  
6 actions.

7 Therefore, the purpose of this Act is to protect patients  
8 and improve accountability by:

9 (1) Requiring prompt reporting of legal and administrative  
10 complaints and claims against a health care  
11 professional to their respective licensing board, the  
12 department of commerce and consumer affairs, and the  
13 insurance commissioner;

14 (2) Extending the time frame by which a medical tort  
15 action can be brought;

16 (3) Establishing additional tolling conditions; and

17 (4) Increasing the cap on damages recoverable for pain and  
18 suffering in medical tort actions.

19 PART II



1 SECTION 2. Chapter 451D, Hawaii Revised Statutes, is  
2 amended by adding two new sections to be appropriately  
3 designated and to read as follows:

4 "§451D- Notice of legal action or administrative  
5 complaint pending against a health care professional; health  
6 care professional and court obligation. (a) Within thirty days  
7 of a health care professional's receipt of a complaint, claim,  
8 or action for damages filed in a court or an administrative  
9 complaint filed with a state or federal agency against the  
10 health care professional for actions related to the health care  
11 professional's license, the health care professional shall  
12 provide written notice of the filing to the respective licensing  
13 board and provide a copy of the complaint, claim, or action.  
14 Failure to comply shall subject the health care professional to  
15 the penalties established pursuant to section 436B-16(b).  
16 (b) Within thirty days of the filing of a complaint,  
17 claim, or action for damages against a health care professional  
18 for actions related to the health care professional's license,  
19 the clerk of the court or administrator of the agency that  
20 received the filing shall send to the respective board a copy of  
21 the complaint, claim, or action.



1        §451D- Licensing authority review of legal action or  
2        complaint filed against a health care professional. Upon  
3        receipt of notice of legal action or complaint filed against a  
4        health care professional for violations of the license, the  
5        respective licensing board shall review the information and make  
6        further inquiry as needed."

7        SECTION 3. Section 453-8.7, Hawaii Revised Statutes, is  
8        amended as follows:

9            1. By amending subsection (a) to read:

10            "(a) Every physician or osteopathic physician licensed  
11        pursuant to this chapter who does not possess professional  
12        liability insurance shall report any complaint, claim, or action  
13        for damages filed in a court, or an administrative complaint  
14        filed with a state or federal agency against the physician for  
15        actions related to the physician's license, or settlement or  
16        arbitration award of a claim or action for damages for death or  
17        personal injury caused by negligence, error, or omission in  
18        practice, or the unauthorized rendering of professional  
19        services. The report shall be submitted to the department of  
20        commerce and consumer affairs within thirty days after the  
21        licensee's receipt of written notice of any complaint, claim, or



1      action for damages, or within thirty days after any written  
2      settlement agreement has been reduced to writing and signed by  
3      all the parties thereto or thirty days after service of the  
4      arbitration award on the parties."

5      2. By amending subsection (c) to read:

6      "(c) The clerks of the respective courts of this State  
7      shall report to the department any complaint, claim, or action  
8      for damages for any death or personal injury caused by the  
9      physician's or osteopathic physician's professional negligence,  
10      error, or omission in the practice of the physician's or  
11      osteopathic physician's profession, or rendering of unauthorized  
12      professional services, or judgment or other determination of the  
13      court, which adjudges or finds that a physician or osteopathic  
14      physician is liable criminally or civilly for any death or  
15      personal injury caused by the physician's or osteopathic  
16      physician's professional negligence, error, or omission in the  
17      practice of the physician's or osteopathic physician's  
18      profession, or rendering of unauthorized professional services.  
19      The report shall be submitted to the department within ten days  
20      after the complaint, claim, or action for damages is filed with  
21      the court or the judgment is entered by the court."



1 SECTION 4. Section 463E-6.5, Hawaii Revised Statutes, is  
2 amended as follows:

3 1. By amending subsection (a) to read:

4 " (a) Every podiatrist licensed pursuant to this chapter  
5 who does not possess professional liability insurance shall  
6 report any complaint, claim, or action for damages filed in a  
7 court, or an administrative complaint filed with a state or  
8 federal agency against the podiatrist for actions related to the  
9 podiatrist's license, or settlement or arbitration award of a  
10 claim or action for damages for death or personal injury caused  
11 by negligence, error, or omission in practice, or the  
12 unauthorized rendering of professional services. The report  
13 shall be submitted to the department of commerce and consumer  
14 affairs within thirty days after the licensee's receipt of  
15 written notice of any complaint, claim, or action for damages,  
16 or within thirty days after any written settlement agreement has  
17 been reduced to writing and signed by all the parties thereto,  
18 or thirty days after service of the arbitration award on the  
19 parties."

20 2. By amending subsection (c) to read:



1        "(c) The clerks of the respective courts of this State  
2 shall report to the department any complaint, claim, or action  
3 for damages for any death or personal injury caused by the  
4 podiatrist's professional negligence, error, or omission in the  
5 practice of the podiatrist's profession, or rendering of  
6 unauthorized professional services, or judgment or other  
7 determination of the court which adjudges or finds that a  
8 podiatrist is liable criminally or civilly for any death or  
9 personal injury caused by the podiatrist's professional  
10 negligence, error, or omission in the practice of the  
11 podiatrist's profession, or rendering of unauthorized  
12 professional services. The report shall be submitted to the  
13 department within ten days after the complaint, claim, or action  
14 for damage is filed with the court or the judgment is entered by  
15 the court."

16        SECTION 5. Section 671-5, Hawaii Revised Statutes, is  
17 amended by amending subsections (a) and (b) to read as follows:

18        "(a) Every self-insured health care provider, and every  
19 insurer providing professional liability insurance for a health  
20 care provider, shall report to the insurance commissioner the  
21 following information about any medical tort claim, known to the



1 self-insured health care provider or insurer, that has been  
2 filed with the court or settled, arbitrated, or adjudicated to  
3 final judgment within ten working days following [such] the  
4 disposition:

5 (1) The name and last known business and residential  
6 addresses of each plaintiff and claimant, whether or  
7 not each recovered anything;

8 (2) The name and last known business and residential  
9 addresses of each health care provider who was claimed  
10 or alleged to have committed a medical tort, whether  
11 or not each was a named defendant and whether or not  
12 any recovery was had against each;

13 (3) The name of the court in which any medical tort  
14 action, or any part thereof, was filed and the docket  
15 number;

16 (4) A brief description or summary of the facts upon which  
17 each claim was based, including the date of  
18 occurrence;

19 (5) The name and last known business and residential  
20 addresses of each attorney for any party to the  
21 settlement, arbitration, or adjudication, and



1 identification of the party represented by each  
2 attorney;

3 (6) Funds expended for defense and plaintiff costs;  
4 (7) The date and amount of settlement, arbitration award,  
5 or judgment in any matter subject to this subsection;  
6 and

7 (8) Actual dollar amount of award received by the injured  
8 party.

9 (b) The insurance commissioner shall forward the name of  
10 every health care provider, except a hospital and physician or  
11 an osteopathic physician or surgeon licensed under chapter 453  
12 or a podiatrist licensed under chapter 463E, against whom a  
13 claim is made, settlement is made, an arbitration award is made,  
14 or judgment is rendered to the appropriate board of professional  
15 registration and examination for review of the fitness of the  
16 health care provider to practice the health care provider's  
17 profession. The insurance commissioner shall forward the entire  
18 report under subsection (a) to the department of commerce and  
19 consumer affairs if the person against whom a claim, settlement,  
20 or arbitration award is made or judgment rendered is a physician



- 1 or osteopathic physician or surgeon licensed under chapter 453
- 2 or a podiatrist licensed under chapter 463E."

### PART III

4 SECTION 6. Section 657-7.3, Hawaii Revised Statutes, is  
5 amended to read as follows:

"§657-7.3 Medical torts; limitation of actions; time[.]  
7 tolling. [+] (a) [+] No action for injury or death against a  
8 [chiropractor, clinical laboratory technologist or technician,  
9 dentist, naturopathic physician, nurse, nursing home  
10 administrator, dispensing optician, optometrist, osteopath,  
11 physician or surgeon, physical therapist, podiatrist,  
12 psychologist, or veterinarian] duly licensed or registered under  
13 the laws of the State, or a licensed hospital as the employer of  
14 any such person,] health care provider based upon [such  
15 person's] the health care provider's alleged professional  
16 negligence, or for rendering professional services without  
17 consent, or for error or omission in [such person's] the health  
18 care provider's practice, shall be brought more than [two] three  
19 years after the plaintiff discovers, or through the use of  
20 reasonable diligence should have discovered, the injury, but in  
21 any event not more than [six] ten years after the date of the



1 alleged act or omission causing the injury or death[. ~~This six-~~  
2 ~~year time limitation~~]; provided that these time limitations  
3 shall be tolled ~~[for any period during which the person has~~  
4 ~~failed to disclose any act, error, or omission upon which the~~  
5 ~~action is based and which is known to the person.~~

6 ~~{(b)} Actions by a minor shall be commenced within six~~  
7 ~~years from the date of the alleged wrongful act except the~~  
8 ~~actions by a minor under the age of ten years shall be commenced~~  
9 ~~within six years or by the minor's tenth birthday, whichever~~  
10 ~~provides a longer period. Such time limitation shall be tolled~~  
11 ~~for any minor for any period during which the parent, guardian,~~  
12 ~~insurer, or health care provider has committed fraud or gross~~  
13 ~~negligence, or has been a party to a collusion in the failure to~~  
14 ~~bring action on behalf of the injured minor for a medical tort.~~  
15 ~~The time limitation shall also be tolled for any period during~~  
16 ~~which the minor's injury or illness alleged to have arisen, in~~  
17 ~~whole or in part, from the alleged wrongful act or omission~~  
18 ~~could not have been discovered through the use of reasonable~~  
19 ~~diligence.]:~~

20 (1) For any period during which the health care provider  
21 has failed to disclose or has made a misrepresentation



1                   regarding any act, error, or omission upon which the  
2                   action is based and which is known to the health care  
3                   provider;

4                   (2)   For actions by a minor based on an injury to the  
5                   minor:

6                   (A)   Until the minor's eighteen birthday;  
7                   (B)   Any period during which the parent, guardian,  
8                   insurer, or health care provider has committed  
9                   fraud or gross negligence, or has been a party to  
10                   a collusion in the failure to bring action on  
11                   behalf of the injured minor for a medical tort;

12                   and

13                   (C)   Any period during which the minor's injury or  
14                   illness alleged to have arisen, in whole or in  
15                   part, from the alleged wrongful act or omission  
16                   could not have been discovered through the use of  
17                   reasonable diligence;

18                   (3)   For actions by an adult under legal disability based  
19                   on an injury to the adult, until the day the legal  
20                   disability is removed;



1                   (4) Where there is continuous treatment for the same  
2                   injury, illness, or condition that gave rise to the  
3                   act or omission upon which the action is based, until  
4                   the day of the last treatment; and  
5                   (5) For actions based on the discovery of a foreign object  
6                   in the body of a patient, until the plaintiff  
7                   discovers, or through the use of reasonable diligence  
8                   should have discovered, the presence of the foreign  
9                   object.

10                  For any action to which more than one of these conditions  
11                  apply, the tolling periods may be applied concurrently or  
12                  consecutively as the court deems appropriate, but in no event  
13                  shall the aggregate tolling period exceed           years.

14                  (b) For the purposes of this section, "health care  
15                  provider" means a chiropractor, clinical laboratory technologist  
16                  or technician, dentist, naturopathic physician, nurse, nursing  
17                  home administrator, dispensing optician, optometrist, osteopath,  
18                  physician or surgeon, physical therapist, podiatrist,  
19                  psychologist, or veterinarian duly licensed or registered under  
20                  the laws of the State, or a licensed hospital as the employer of  
21                  any of these persons."



1 SECTION 7. Section 663-8.7, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 " [+]§663-8.7[+] Limitation on pain and suffering. (a)  
4 Damages recoverable for pain and suffering as defined in section  
5 663-8.5 shall be limited to a maximum award of:

6 (1) \$500,000 in a medical tort action; provided that this  
7 limitation shall not apply to damages resulting from a  
8 health care provider's act or omission that  
9 constitutes gross negligence or intentional  
10 misconduct; or

11 (2) \$375,000[+] in all other tort actions, provided  
12 further that [this limitation] these limitations shall  
13 not apply to tort actions enumerated in section  
14 663-10.9(2).

15 (b) For the purposes of this section:

16 "Health care provider" has the same meaning as defined in  
17 section 657-7.3.

18 "Medical tort" has the same meaning as defined in section  
19 671-1."

20 PART IV



1 SECTION 8. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 9. This Act shall take effect upon its approval.

4

INTRODUCED BY: 



**Report Title:**

Health Care Professionals; Health Care Providers; License; Legal and Administrative Claims; Reporting Requirements; Courts; State Agencies; Professional Liability Insurers; Insurance Commissioner; Licensing Boards; Medical Torts; Statute of Limitation; Statute of Repose; Tolling; Pain and Suffering Damages; Award Limit

**Description:**

Part II - Requires health care professionals, and courts and agencies in receipt of the filing, to report to the respective licensing board any legal or administrative complaint, claim, or action for damages filed against the health care professional within thirty days of receipt of the filing. Requires review by the licensing boards. Requires filings against physicians, osteopathic physicians, or podiatrists to be reported to the Department of Commerce and Consumer Affairs. Requires self-insured health care providers and professional liability insurers for health care providers to report to the Insurance Commissioner any medical tort claims filed with the court and requires the Insurance Commissioner to forward certain information to the appropriate professional board or the Department of Commerce and Consumer Affairs. Part III - Extends the time frame by which a medical tort action can be brought and establishes additional tolling conditions. Increases the cap on damages recoverable for pain and suffering in medical tort actions.

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