H.B. NO. 3102

A BILL FOR AN ACT

RELATING TO MEDICAL LIABILITY.

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

SECTION 1. Chapter 671, Hawaii Revised Statutes, is amended by adding six new sections to be appropriately designated and to read as follows:

"**§671-A Limitation on noneconomic damages.** Notwithstanding section 663-8.7, noneconomic damages as defined in section 663-8.5 shall be limited in medical tort actions to a maximum award of $250,000.

§671-B Attorney's fees. (a) An attorney shall not contract for or collect a contingency fee for representing any person seeking damages in connection with an action for a medical tort in excess of the following limits:

(1) Forty per cent of the first $50,000 recovered;

(2) Thirty-three-and-one-third per cent of the next $50,000 recovered;

(3) Twenty-five per cent of the next $500,000 recovered; and

(4) Fifteen per cent of any amount on which the recovery exceeds $600,000.

1 The limitations shall apply regardless of whether the recovery
2 is by settlement, arbitration, or judgment, or whether the
3 person for whom the recovery is made is a responsible adult, a
4 minor, or a person of unsound mind.
5 (b) For purposes of this section, "recovered" or
6 "recovery" means the net amount of money recovered after
7 deducting any disbursements or costs incurred in connection with
8 prosecution or settlement of the claim. Costs of medical care
9 incurred by the plaintiff and the attorney's office overhead
10 costs or charges are not deductible disbursements or costs for
11 such purpose.
12 **§671-C Assessing percentage of negligence.** Upon request
13 of any nonsettling healthcare provider against whom a plaintiff
14 alleges a medical tort causing injury, the trier of fact shall
15 consider, in assessing any percentage of negligence or other
16 fault, the negligence or other fault of all alleged parties,
17 including the negligence or other fault of any person or entity
18 who has entered into a settlement with the plaintiff for the
19 claimed damages, even when the settlement has been determined to
20 have been made in good faith, pursuant to section 663-15.5.

1 **§671-D Economic damages.** (a) A trier of fact may render
2 a verdict for the plaintiff in a medical tort action that
3 includes economic damages.
4 (b) For the purposes of this section, "economic damages"
5 include, but are not limited to, past and future medical
6 expenses, loss of past and future earnings, loss of use of
7 property, cost of repair or replacement, cost of obtaining
8 domestic services, loss of employment, and loss of business and
9 employment opportunities.
10 **§671-E Proportionate allocation of economic damages.** The
11 amount of economic damages allocated to a healthcare provider in
12 a medical tort action shall be based upon the healthcare
13 provider's proportionate percentage of negligence or other
14 fault.
15 **§671-F Noneconomic damages.** (a) If the trier of fact
16 renders a verdict for the plaintiff in a medical tort action,
17 the court shall enter judgment of liability against each
18 defendant healthcare provider in accordance with the percentage
19 of negligence or other fault for compensatory damages that is
20 attributed to the healthcare provider by the trier of fact.
21 (b) Judgment shall not be entered against any healthcare
22 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."

SECTION 2. Section 663-11, Hawaii Revised Statutes, is amended to read as follows:

"**§663-11 Joint tortfeasors defined.** For the purpose of this part the term "joint tortfeasors" means two or more persons jointly or severally liable in tort for the same injury to person or property, whether or not judgment has been recovered against all or some of them[~~.~~], except as provided for healthcare providers in chapter 671."

SECTION 3. Section 671-1, Hawaii Revised Statutes, is amended to read as follows:

"**§671-1 Definitions.** As used in this chapter:

[~~(1)~~] "Health care provider" or "healthcare provider" means a physician or surgeon licensed under chapter 453, a physician and surgeon licensed under chapter 460, a podiatrist licensed under chapter 463E, a health care facility as defined in section 323D-2, a dentist licensed under chapter 448, an optometrist licensed under chapter 459, a pharmacist licensed under chapter 461, a psychologist licensed under chapter 465, and the employees and legal representatives of any of them. Health care provider shall not mean any nursing institution or nursing

service conducted by and for those who rely upon treatment by spiritual means through prayer alone, or employees of such institution or service.

[~~(2)~~] "Medical tort" means [~~professional negligence, the rendering of professional service without informed consent, or an error or omission in professional practice, by a health care provider, which proximately causes death, injury, or other damage to a patient.~~] a negligent act or omission to act by a healthcare provider in the rendering of professional services, or the rendering of professional service by a healthcare provider without informed consent, which act or omission or rendering of service without informed consent is the proximate cause of a personal injury or wrongful death, provided that such services are within the scope of services for which the provider is licensed and which are not within any restriction imposed by the licensing agency or licensed hospital."

SECTION 4. In codifying the new sections added to chapter 671, Hawaii Revised Statutes, by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

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

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

SECTION 7. This Act shall take effect on July 1, 2008.

INTRODUCED BY: Calvin K.Y. Say

BY REQUEST

JAN 22 2008

H.B. NO. 3102

Report Title:
Medical Liability

Description:
Addresses medical malpractice insurance costs by capping non-economic damages at $250,000, establishing limits for attorney contingent fees, and requiring that economic damages be allocated based upon proportionate percentage of negligence.

HB 3102

JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO MEDICAL LIABILITY.

PURPOSE: To lower medical malpractice insurance premiums by adopting legislation that directly affects elements impacting medical malpractice insurance rates.

MEANS: Add six new sections to chapter 671 and amend sections 663-11 and 671-1, Hawaii Revised Statutes.

JUSTIFICATION: The current healthcare liability system is a costly and ineffective mechanism for resolving healthcare liability claims and compensating injured patients. There are no for-profit insurers licensed in Hawaii offering medical malpractice insurance, and premium rates from nonprofit insurers have increased significantly, especially for medical specialties. The rise in medical malpractice insurance premiums has economically inhibited the ability of doctors to provide necessary services in rural areas and on the neighbor islands. Reform is required to address the adverse impact of the high cost of medical malpractice insurance on patient access to healthcare services, patient care, and cost-efficient healthcare in rural areas and the neighbor islands.

This bill:

1. Limits noneconomic damages in medical tort actions to a maximum award of $250,000;

2. Establishes limits for contingent fees that may be contracted by attorneys for medical tort actions, as follows:

   A. 40 percent of the first $50,000

HB 3102

recovered;

B. 33-1/3 percent of the next $50,000 recovered;

C. 25 percent of the next $500,000 recovered; and

D. 15 percent of any amount of recovery exceeding $600,000;

3. Defines "recovered" or "recovery" as the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution or settlement of the claim;

4. In assessing any percentage of negligence or other fault, requires the trier of fact to consider the negligence or fault of all alleged parties, including those who have entered into a settlement, upon request of any nonsettling defendant healthcare provider;

5. Defines "economic damages" as including past and future medical expenses, loss of past and future earnings, loss of use of property, cost of repair or replacement, cost of obtaining domestic services, loss of employment, and loss of business and employment opportunities.

6. Requires economic damages to be allocated to a healthcare provider based upon the healthcare provider's proportionate percentage of negligence or other fault;

7. Requires the trier of fact, where a verdict is rendered for the plaintiff, to enter judgment of liability against each defendant healthcare provider in accordance with the percentage of negligence or other fault for

HB3102

compensatory damages attributed to the provider by the trier of fact; provided that judgment shall not be entered against a healthcare provider who is not a party or who has been released, dismissed, or discharged as a party;

8. Includes in the definition of "healthcare provider", dentists, optometrists, pharmacists, psychologists, and their employees and legal representatives; and

9. Redefines "medical tort" to mean a negligent act or omission to act by a healthcare provider in the rendering of professional services, or the rendering of professional service by a healthcare provider without informed consent, which act or omission or rendering of service without informed consent is the proximate cause of a personal injury or wrongful death, provided that such services are within the scope of services for which the provider is licensed and which are not within any restriction imposed by the licensing agency or licensed hospital.

Impact on the public: The public interest will be served because this bill will improve the availability of healthcare services and the fairness and cost-effectiveness of the medical liability system.

Impact on the department and other agencies: None.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: CCA-106.

OTHER AFFECTED AGENCIES: None.

HB 3102

EFFECTIVE DATE: July 1, 2008.