

JAN 18 2008

---

---

# A BILL FOR AN ACT

RELATING TO MEDICAL LIABILITY.

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

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

4           "§671-        Limitation on noneconomic damages.

5 Notwithstanding any law to the contrary, noneconomic damages, as  
6 defined in section 663-8.5, shall be limited in medical tort  
7 actions against a health care provider to a maximum award of  
8 \$\_\_\_\_\_.

9           §671-        Attorney's fees. (a) An attorney shall not  
10 contract for or collect a contingency fee for representing any  
11 person seeking damages in connection with an action for a  
12 medical tort in excess of the following limits:

13           (1) \_\_\_\_\_ per cent of the first \$\_\_\_\_\_ recovered;

14           (2) \_\_\_\_\_ per cent of the next \$\_\_\_\_\_ recovered;

15           (3) \_\_\_\_\_ per cent of the next \$\_\_\_\_\_ recovered; and

16           (4) \_\_\_\_\_ per cent of any amount recovered that exceeds

17           \$\_\_\_\_\_.



1       The limitations shall apply regardless of whether the  
2 recovery is by settlement, arbitration, or judgment, or whether  
3 the person for whom the recovery is made is a responsible adult,  
4 an infant, or a person of unsound mind.

5       (b) If periodic payments are awarded to the plaintiff, the  
6 court shall place a total value on these payments based upon the  
7 projected life expectancy of the plaintiff and include this  
8 amount in computing the total award from which attorney's fees  
9 are calculated under this section.

10       (c) For the purposes of this section, "recovered" means  
11 the net sum recovered after deducting any disbursements or costs  
12 incurred in connection with prosecution or settlement of the  
13 claim. Costs of medical care incurred by the plaintiff and the  
14 attorney's office overhead costs or charges are not deductible  
15 disbursements or costs for such purpose."

16       SECTION 2. Section 671-1, Hawaii Revised Statutes, is  
17 amended to read as follows:

18       "**§671-1 Definitions.** As used in this chapter:

19       [~~(1)~~] "Health care provider" or "healthcare provider" means  
20 a physician or surgeon licensed under chapter 453, a physician  
21 and surgeon licensed under chapter 460, a podiatrist licensed  
22 under chapter 463E, a health care facility as defined in section



1 323D-2, a chiropractor licensed under chapter 442, a dentist  
2 licensed under chapter 448, a dental hygienist licensed under  
3 chapter 447, an acupuncture practitioner licensed under chapter  
4 436E, a massage therapist licensed under chapter 452, a nurse  
5 licensed under chapter 457, an occupational therapist licensed  
6 under chapter 457G, an optometrist licensed under chapter 459, a  
7 pharmacist licensed under chapter 461, a physical therapist  
8 licensed under chapter 461J, a psychologist licensed under  
9 chapter 465, a marriage and family therapist licensed under  
10 chapter 451J, a dietitian licensed under chapter 448B, a  
11 radiologic technologist licensed under chapter 466J, a speech  
12 pathologist or audiologist licensed under chapter 468E, a  
13 veterinarian licensed under chapter 471, and the employees and  
14 legal representatives of any of them. Health care provider  
15 shall not mean any nursing institution or nursing service  
16 conducted by and for those who rely upon treatment by spiritual  
17 means through prayer alone, or employees of such institution or  
18 service.

19       [-(2)] "Medical tort" means [~~professional negligence, the~~  
20 ~~rendering of professional service without informed consent, or~~  
21 ~~an error or omission in professional practice, by a health care~~  
22 ~~provider, which proximately causes death, injury, or other~~



1 ~~damage to a patient.]~~ a negligent act or omission to act by a  
2 healthcare provider in the rendering of professional services,  
3 or the rendering of professional service by a healthcare  
4 provider without informed consent, which act or omission or  
5 rendering of service without informed consent is the proximate  
6 cause of a personal injury or wrongful death; provided that such  
7 services are within the scope of services for which the provider  
8 is licensed and that are not within any restriction imposed by  
9 the licensing agency or licensed hospital."

10 SECTION 3. This Act does not affect rights and duties that  
11 matured, penalties that were incurred, and proceedings that were  
12 begun, before its effective date, nor does it affect the rights  
13 of the State of Hawaii under section 663-10.5, Hawaii Revised  
14 Statutes.

15 SECTION 4. Statutory material to be repealed is bracketed  
16 and stricken. New statutory material is underscored.

17 SECTION 5. This Act shall take effect upon its approval;  
18 provided that this Act shall be repealed on the earlier of  
19 January 1, 2015, or upon the failure of any insurer providing  
20 professional liability insurance for a health care provider in  
21 the State to meet the following requirements:



- 1           (1) Between July 1, 2008, and December 31, 2008, no  
2           insurer providing professional liability insurance for  
3           a health care provider in the State may increase the  
4           professional liability insurance rates unless a rate  
5           increase is required to avoid imminent insolvency or  
6           provide a fair rate of return;
- 7           (2) Beginning January 1, 2009, all insurers providing  
8           professional liability insurance for health care  
9           providers in the State shall implement a premium rate  
10          that is the lower of the following:
- 11           (A) Not greater than the rate in effect on January 1,  
12           2005, unless to do so would cause imminent  
13           insolvency or fail to provide a fair rate of  
14           return; or
- 15           (B) Seventy-five per cent of the lowest rate in  
16           effect between January 1, 2005, and December 31,  
17           2007, unless to do so would cause imminent  
18           insolvency or fail to provide a fair rate of  
19           return;
- 20          and
- 21          (3) Beginning January 1, 2010, no insurer providing  
22          professional liability insurance for a health care



1 provider may implement any rate increase greater than  
2 two and one half per cent in any twelve month period,  
3 unless a rate increase greater than two and one half  
4 per cent is required to avoid imminent insolvency or  
5 provide a fair rate of return.

6 Any person may seek a declaratory judgment as to whether an  
7 insurer has failed to comply with paragraphs (1), (2), or (3) by  
8 bringing an action against the insurer in the circuit court of  
9 the county in which the petitioner resides or has its principal  
10 place of business; provided that upon the repeal of this Act,  
11 section 671-1, Hawaii Revised Statutes, shall be reenacted in  
12 the same form it was in one day prior to this Act taking effect.

13

INTRODUCED BY: *Shianne Chun Oalland*



**Report Title:**

Medical Tort Liability; Noneconomic Damages

**Description:**

Limits noneconomic damages that may be recovered in medical tort actions. Limits the amount of attorney's fees that may be collected in connection with a medical tort action. Amends the definition of "health care provider" and "medical tort". Sunsets on the earlier of the date on which an insurer does not comply with the premium rate caps, or July 1, 2015.

