

JAN 23 2015

A BILL FOR AN ACT

RELATING TO TORT LIABILITY.

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

1 SECTION 1. Chapter 46, Hawaii Revised Statutes, is amended
2 by adding a new section to be appropriately designated and to
3 read as follows:

4 "§46- Hazardous recreational activity; limited county
5 liability. (a) Subject to subsections (b) and (c), no county
6 agency or county employee shall be liable to:

7 (1) Any person who participates in a hazardous
8 recreational activity, including any person who
9 assists the participant; or

10 (2) Any spectator who knew or reasonably should have known
11 that the hazardous recreational activity created a
12 substantial risk of injury to the spectator and was
13 voluntarily in the place of risk, or having the
14 ability to do so failed to leave the place of risk;
15 for any injury or damage to persons or property arising out of
16 the hazardous recreational activity.



- 1 (b) The injuries or damages described in subsection (a)
2 shall include those resulting from:
- 3 (1) Any act of the participant while engaged in the
4 hazardous recreational activity;
- 5 (2) The negligence of any participant of the hazardous
6 recreational activity;
- 7 (3) Equipment failure that occurs despite reasonable care
8 and maintenance;
- 9 (4) Any airborne projectile that is an inherent risk of
10 the hazardous recreational activity, including rocks,
11 trees, equipment, or human bodies, as applicable;
- 12 (5) Adverse weather conditions, including lightning, rain,
13 flooding, or heat;
- 14 (6) The participant's inability to safely participate in
15 the hazardous recreational activity because of the
16 participant's physical or mental limitations;
- 17 (7) A preexisting health condition; or
- 18 (8) Training or any other activity that the participant
19 undertakes in preparation for the hazardous
20 recreational activity.



1 (c) Notwithstanding subsections (a) and (b), this section
2 shall not limit liability that would otherwise exist for:

3 (1) Failure of the county agency or county employee to
4 guard or warn of a known dangerous condition or of
5 another hazardous recreational activity known to the
6 county agency or county employee that is not
7 reasonably assumed by the participant as inherently a
8 part of the hazardous recreational activity out of
9 which the injury or damage arose;

10 (2) Injury or damage suffered in any case where permission
11 to participate in the hazardous recreational activity
12 was granted for a specific fee. For the purposes of
13 this paragraph, the term "specific fee" shall not
14 include a fee or consideration charged for a general
15 purpose such as a general park admission charge, a
16 vehicle entry or parking fee, or an administrative or
17 group use application or permit fee, as distinguished
18 from a specific fee charged for participation in the
19 specific hazardous recreational activity out of which
20 the injury or damage arose;



- 1 (3) Injury or damage suffered to the extent proximately
2 caused by the negligent failure of the county agency
3 or county employee to properly construct or maintain
4 in good repair any structure, recreational equipment
5 or machinery, or substantial work or improvement
6 utilized in the hazardous recreational activity out of
7 which the injury or damage arose;
- 8 (4) Injury or damage suffered in any case where the county
9 agency or county employee recklessly or with gross
10 negligence promoted the participation in or observance
11 of a hazardous recreational activity. For the
12 purposes of this paragraph, promotional literature or
13 a public announcement or advertisement that merely
14 describes the available facilities and services on the
15 property shall not constitute a reckless or grossly
16 negligent promotion; or
- 17 (5) An act of gross negligence by a county agency or
18 county employee that is the proximate cause of the
19 injury or damage;



1 provided that this subsection shall not be construed to create a
2 duty of care or basis of liability for personal injury or damage
3 to personal property.

4 (d) As used in this section, the term:

5 "County agency" includes the executive departments, boards,
6 and commissions of the county but does not include any
7 contractor with the county.

8 "County employee" includes officers and employees of any
9 county agency and persons acting temporarily on behalf of a
10 county agency in an official capacity, with or without
11 compensation.

12 "Hazardous recreational activity" means a recreational
13 activity conducted on property of a county agency that creates a
14 substantial risk of injury to a participant or a spectator,
15 including but not limited to:

16 (1) Water contact activities, except diving, in places
17 where or at a time when lifeguards are not provided
18 and reasonable warning thereof has been given or the
19 injured party should reasonably have known that no
20 lifeguard was provided at the time;



- 1 (2) Any form of diving into water from other than a diving
2 board or diving platform, or at any place or from any
3 structure where diving is prohibited and reasonable
4 warning thereof has been given;
- 5 (3) Rock climbing; and
- 6 (4) Animal riding, including equestrian competition,
7 archery, bicycle racing or jumping, mountain
8 bicycling, boating, cross-country and downhill skiing,
9 hang gliding, kayaking, motorized vehicle racing, off-
10 road motorcycling or all-terrain driving of any kind,
11 orienteering, pistol and rifle shooting, racketeering,
12 rodeo, spelunking, sky diving, sport parachuting,
13 paragliding, sports in which it is reasonably
14 foreseeable that there will be rough bodily contact
15 with one or more participants, surfing, trampolining,
16 tree climbing, tree rope swinging, waterskiing, white
17 water rafting, windsurfing, and zipline riding. For
18 the purposes of this paragraph, the term "mountain
19 bicycling" shall not include riding a bicycle on paved
20 pathways, roadways, or sidewalks."



1 SECTION 2. Chapter 662, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§662- Hazardous recreational activity; limited state
5 liability. (a) Subject to subsections (b) and (c), no state
6 agency or employee of the State shall be liable to:

- 7 (1) Any person who participates in a hazardous
8 recreational activity, including any person who
9 assists the participant; or
10 (2) Any spectator who knew or reasonably should have known
11 that the hazardous recreational activity created a
12 substantial risk of injury to the spectator and was
13 voluntarily in the place of risk, or having the
14 ability to do so failed to leave the place of risk;
15 for any injury or damage to persons or property arising out of
16 the hazardous recreational activity.

17 (b) The injuries or damages described in subsection (a)
18 shall include those resulting from:

- 19 (1) Any act of the participant while engaged in the
20 hazardous recreational activity;



- 1 (2) The negligence of any participant of the hazardous
- 2 recreational activity;
- 3 (3) Equipment failure that occurs despite reasonable care
- 4 and maintenance;
- 5 (4) Any airborne projectile that is an inherent risk of
- 6 the hazardous recreational activity, including rocks,
- 7 trees, equipment, or human bodies, as applicable;
- 8 (5) Adverse weather conditions, including lightning, rain,
- 9 flooding, or heat;
- 10 (6) The participant's inability to safely participate in
- 11 the hazardous recreational activity because of the
- 12 participant's physical or mental limitations;
- 13 (7) A preexisting health condition; or
- 14 (8) Training or any other activity that the participant
- 15 undertakes in preparation for the hazardous
- 16 recreational activity.
- 17 (c) Notwithstanding subsections (a) and (b), this section
- 18 shall not limit liability that would otherwise exist for:
- 19 (1) Failure of the state agency or employee of the State
- 20 to guard or warn of a known dangerous condition or of
- 21 another hazardous recreational activity known to the



1 state agency or employee of the State that is not
2 reasonably assumed by the participant as inherently a
3 part of the hazardous recreational activity out of
4 which the injury or damage arose;

5 (2) Injury or damage suffered in any case where permission
6 to participate in the hazardous recreational activity
7 was granted for a specific fee. For the purposes of
8 this paragraph, the term "specific fee" shall not
9 include a fee or consideration charged for a general
10 purpose such as a general park admission charge, a
11 vehicle entry or parking fee, or an administrative or
12 group use application or permit fee, as distinguished
13 from a specific fee charged for participation in the
14 specific hazardous recreational activity out of which
15 the injury or damage arose;

16 (3) Injury or damage suffered to the extent proximately
17 caused by the negligent failure of the state agency or
18 employee of the State to properly construct or
19 maintain in good repair any structure, recreational
20 equipment or machinery, or substantial work or



1 improvement utilized in the hazardous recreational
2 activity out of which the injury or damage arose;

3 (4) Injury or damage suffered in any case where the state
4 agency or employee of the State recklessly or with
5 gross negligence promoted the participation in or
6 observance of a hazardous recreational activity. For
7 the purposes of this paragraph, promotional literature
8 or a public announcement or advertisement that merely
9 describes the available facilities and services on the
10 property shall not constitute a reckless or grossly
11 negligent promotion; or

12 (5) An act of gross negligence by a state agency or
13 employee of the State that is the proximate cause of
14 the injury or damage;

15 provided that this subsection shall not be construed to create a
16 duty of care or basis of liability for personal injury or damage
17 to personal property.

18 (d) As used in this section, the term "hazardous
19 recreational activity" means a recreational activity conducted
20 on property of a state agency that creates a substantial risk of



1 injury to a participant or a spectator, including but not
2 limited to:

3 (1) Water contact activities, except diving, in places
4 where or at a time when lifeguards are not provided
5 and reasonable warning thereof has been given or the
6 injured party should reasonably have known that no
7 lifeguard was provided at the time;

8 (2) Any form of diving into water from other than a diving
9 board or diving platform, or at any place or from any
10 structure where diving is prohibited and reasonable
11 warning thereof has been given;

12 (3) Rock climbing; and

13 (4) Animal riding, including equestrian competition,
14 archery, bicycle racing or jumping, mountain
15 bicycling, boating, cross-country and downhill skiing,
16 hang gliding, kayaking, motorized vehicle racing, off-
17 road motorcycling or all-terrain driving of any kind,
18 orienteering, pistol and rifle shooting, racketeering,
19 rodeo, spelunking, sky diving, sport parachuting,
20 paragliding, sports in which it is reasonably
21 foreseeable that there will be rough bodily contact



1 with one or more participants, surfing, trampolining,
2 tree climbing, tree rope swinging, waterskiing, white
3 water rafting, windsurfing, and zipline riding. For
4 the purposes of this paragraph, the term "mountain
5 bicycling" shall not include riding a bicycle on paved
6 pathways, roadways, or sidewalks."

7 SECTION 3. Section 520-2, Hawaii Revised Statutes, is
8 amended by amending the definition of "recreational purpose" to
9 read as follows:

10 ""Recreational purpose" includes but is not limited to any
11 of the following, or any combination thereof: hunting, fishing,
12 swimming, surfing, windsurfing, water skiing, boating, white
13 water rafting, kayaking, camping, picnicking, hiking,
14 orienteering, spelunking, pleasure driving, motorized vehicle
15 racing, off-road motorcycling or all-terrain driving of any
16 kind, nature study, [~~water skiing,~~] winter sports, [and]
17 including cross-country and downhill skiing, animal riding,
18 including equestrian competition and rodeo, archery, bicycle
19 racing or jumping, mountain bicycling, pistol and rifle
20 shooting, racketeering, sky diving, sport parachuting,
21 paragliding, hang gliding, trampolining, rock climbing, tree



S.B. NO. 605

1 climbing, tree rope swinging, zipline riding, and viewing or
 2 enjoying historical, archaeological, scenic, or scientific
 3 sites."

4 SECTION 4. This Act does not affect rights and duties that
 5 matured, penalties that were incurred, and proceedings that were
 6 begun before its effective date.

7 SECTION 5. Statutory material to be repealed is bracketed
 8 and stricken. New statutory material is underscored.

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

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INTRODUCED BY: Paul E. Pelt

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S.B. NO. 605

Report Title:

Hazardous Recreational Activity; Immunity of County and State Agencies; Limited Liability of Private Landowners

Description:

Grants immunity to county and state agencies and employees from liability for injury arising out of hazardous recreational activities. Specifies hazardous recreational activities from which private landowners have limited liability for damages arising therefrom.

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

