

JAN 22 2010

A BILL FOR AN ACT

RELATING TO RECREATIONAL ACTIVITIES.

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

1 SECTION 1. The legislature finds that an unintended
2 consequence of the existing law regarding civil liability for
3 injuries sustained during a recreational activity is to prevent
4 a court from dismissing non-meritorious claims by summary
5 judgment. Under the existing law, any claim to recover for
6 injuries sustained from a recreational activity provided by a
7 commercial provider is subject to a factual determination by a
8 judge or jury as to whether risk of the injury sustained was
9 inherent to that activity. This requirement prevents a judge
10 from disposing of claims that are facially invalid without an
11 often lengthy and costly process of factual investigation and
12 discovery. The legislature finds that removing the requirement
13 that a trier of fact determine whether a risk is inherent to a
14 recreational activity serves the interest of judicial efficiency
15 and economy.

16 SECTION 2. Section 663-1.54, Hawaii Revised Statutes, is
17 amended by amending subsection (c) to read as follows:



1 "(c) [~~The determination of whether a risk is inherent or~~
2 ~~not is for the trier of fact.~~] As used in this section an
3 "inherent risk":

4 (1) Is a danger that a reasonable person would understand
5 to be associated with the activity by the very nature
6 of the activity engaged in;

7 (2) Is a danger that a reasonable person would understand
8 to exist despite the owner or operator's exercise of
9 reasonable care to eliminate or minimize the danger,
10 and is generally beyond the control of the owner or
11 operator; and

12 (3) Does not result from the negligence, gross negligence,
13 or wanton act or omission of the owner or operator."


14 SECTION 3. This Act does not affect rights and duties that
15 matured, penalties that were incurred, and proceedings that were
16 begun before its effective date.

17 SECTION 4. Statutory material to be repealed is bracketed
18 and stricken.

19 SECTION 5. This Act shall take effect on July 1, 2010.

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INTRODUCED BY: Rosely de Bob

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Mike Gabel
Norman Sabon
et al



Report Title:

Recreational Activities; Civil Liability

Description:

Removes the requirement that a trier of fact determine whether or not a risk is inherent to a recreational activity.

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