

JAN 20 2012

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# A BILL FOR AN ACT

RELATING TO LANDOWNER LIABILITY.

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

1           SECTION 1. The legislature finds that Hawaii's  
2 recreational use statute, codified at chapter 520, Hawaii  
3 Revised Statutes, was first enacted in 1969. All states have  
4 some form of recreational use statute. These recreational use  
5 statutes are based on one of two uniform laws. As such, there  
6 are some variations between the states' laws, as states have  
7 amended their laws to further serve their intended purposes of  
8 encouraging private property owners to open up their lands to  
9 the public for recreational use either free of charge or for a  
10 nominal fee, while protecting landowners from legal liability  
11 for accidents that may occur to people using their land for  
12 recreational purposes, although landowners are still liable for  
13 intentional injuries and gross negligence.

14           The legislature further finds that landowners may wish to  
15 make improvements to their land, in order to make the property  
16 safer for recreational users, but the costs of these  
17 improvements may be prohibitive if they are not somehow offset.  
18 Some states, including Arizona, have allowed landowners to



1 charge a nominal fee to help recover their costs of managing the  
2 access to the property. However, under Hawaii's existing law,  
3 even a small charge would terminate the landowner's protection  
4 from liability.

5 Other states, including Colorado, have incorporated  
6 provisions in their recreational use statutes that allow the  
7 prevailing party in a lawsuit involving recreational use of  
8 private property to recover costs and attorney fees. Therefore,  
9 if a landowner must defend himself or herself against a claim,  
10 and the owner prevails under the recreational use statute, then  
11 the owner would be entitled to recover costs and attorney fees.  
12 If the recreational user prevails, then the owner would be  
13 obligated to pay the user's costs and attorney fees. These  
14 types of provisions protect a landowner from nuisance suits,  
15 while also allowing a user to recover costs and fees when the  
16 landowner has acted wrongfully or otherwise does not qualify for  
17 limited liability under the recreational use statute.

18 The purpose of this Act is to further encourage private  
19 property owners to open up their lands to the public for  
20 recreational use by:

- 21 (1) Allowing a landowner, public entity, or a nonprofit  
22 corporation to charge a nominal fee to offset the cost



1 of managing or providing access to the land for  
 2 recreational purposes; and  
 3 (2) Allowing the prevailing party in a lawsuit involving  
 4 recreational use of private property to recover costs  
 5 and attorney fees.

6 SECTION 2. Chapter 520, Hawaii Revised Statutes, is  
 7 amended by adding a new section to be appropriately designated  
 8 and to read as follows:

9 **"§520- Prevailing party; recovering costs and attorney**  
 10 **fees.** The prevailing party in any civil action by a  
 11 recreational user for damages against an owner of land who  
 12 allows the use of the owner's land for recreational purposes  
 13 shall recover the costs of the action together with reasonable  
 14 attorney fees as determined by the court."

15 SECTION 3. Section 520-2, Hawaii Revised Statutes, is  
 16 amended by amending the definition of "charge" to read as  
 17 follows:

18 "Charge" means the admission price or fee asked in return  
 19 for invitation or permission to enter or go upon the land[-];  
 20 provided that a fee that is charged by a landowner, public  
 21 entity, or a nonprofit corporation to offset the cost of  
 22 managing or providing access to the land for recreational



1 purposes shall not constitute a charge for purposes of this  
2 definition."

3 SECTION 4. Act 82, Session Laws of Hawaii 2003, section 8,  
4 as amended by Act 152, Session Laws of Hawaii 2007, section 5,  
5 as amended by Act 81, Session Laws of Hawaii 2009, section 3, is  
6 amended to read as follows:

7 "SECTION 8. This Act shall take effect on July 1, 2003 [~~7~~  
8 ~~and shall be repealed on June 30, 2014~~]."

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

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

14 SECTION 7. This Act shall take effect upon its approval.

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INTRODUCED BY: *Keoni Koko*  
By request



**Report Title:**

Landowner Liability; Recreational Use Statute; Public Land

**Description:**

Authorizes the recovery of costs and reasonable attorney fees by the prevailing party in a civil action under the recreational use statute. Allows a landowner, public entity, or a nonprofit corporation to charge a fee to offset the cost of managing or providing public access to land for recreational purposes and still be immunized from liability under the recreational use statute. Makes permanent certain liability protections for state and county governments relating to public lands.

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

