

JAN 24 2013

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.

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



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



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

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

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



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

3 (4) Injury or damage suffered in any case where the county
4 agency or county employee recklessly or with gross
5 negligence promoted the participation in or observance
6 of a hazardous recreational activity. For the
7 purposes of this paragraph, promotional literature or
8 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 county agency or
13 county employee that is the proximate cause of the
14 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:

19 "County agency" includes the executive departments, boards,
20 and commissions of the county but does not include any
21 contractor with the county.



1 "County employee" includes officers and employees of any
2 county agency and persons acting temporarily on behalf of a
3 county agency in an official capacity, with or without
4 compensation.

5 "Hazardous recreational activity" means a recreational
6 activity conducted on property of a county agency that creates a
7 substantial risk of injury to a participant or a spectator,
8 including but not limited to:

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

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

18 (3) Rock climbing; and

19 (4) Animal riding, including equestrian competition,
20 archery, bicycle racing or jumping, mountain
21 bicycling, boating, cross-country and downhill skiing,
22 hang gliding, kayaking, motorized vehicle racing, off-



1 road motorcycling or all-terrain driving of any kind,
2 orienteering, pistol and rifle shooting, racketeering,
3 rodeo, spelunking, sky diving, sport parachuting,
4 paragliding, sports in which it is reasonably
5 foreseeable that there will be rough bodily contact
6 with one or more participants, surfing, trampolining,
7 tree climbing, tree rope swinging, waterskiing, white
8 water rafting, windsurfing, and zipline riding. For
9 the purposes of this paragraph, the term "mountain
10 bicycling" shall not include riding a bicycle on paved
11 pathways, roadways, or sidewalks."

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

15 "§662- Hazardous recreational activity; limited state
16 liability. (a) Subject to subsections (b) and (c), no state
17 agency or employee of the State shall be liable to:

18 (1) Any person who participates in a hazardous
19 recreational activity, including any person who
20 assists the participant; or

21 (2) Any spectator who knew or reasonably should have known
22 that the hazardous recreational activity created a



1 substantial risk of injury to the spectator and was
2 voluntarily in the place of risk, or having the
3 ability to do so failed to leave the place of risk;
4 for any injury or damage to persons or property arising out of
5 the hazardous recreational activity.

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

8 (1) Any act of the participant while engaged in the
9 hazardous recreational activity;

10 (2) The negligence of any participant of the hazardous
11 recreational activity;

12 (3) Equipment failure that occurs despite reasonable care
13 and maintenance;

14 (4) Any airborne projectile that is an inherent risk of
15 the hazardous recreational activity, including rocks,
16 trees, equipment, or human bodies, as applicable;

17 (5) Adverse weather conditions, including lightning, rain,
18 flooding, or heat;

19 (6) The participant's inability to safely participate in
20 the hazardous recreational activity because of the
21 participant's physical or mental limitations;

22 (7) A preexisting health condition; or



1 (8) Training or any other activity that the participant
2 undertakes in preparation for the hazardous
3 recreational activity.

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

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

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



1 specific hazardous recreational activity out of which
2 the injury or damage arose;

3 (3) Injury or damage suffered to the extent proximately
4 caused by the negligent failure of the state agency or
5 employee of the State to properly construct or
6 maintain in good repair any structure, recreational
7 equipment or machinery, or substantial work or
8 improvement utilized in the hazardous recreational
9 activity out of which the injury or damage arose;

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

19 (5) An act of gross negligence by a state agency or
20 employee of the State that is the proximate cause of
21 the 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 "hazardous
5 recreational activity" means a recreational activity conducted
6 on property of a state agency that creates a substantial risk of
7 injury to a participant or a spectator, including but not
8 limited to:

- 9 (1) Water contact activities, except diving, in places
10 where or at a time when lifeguards are not provided
11 and reasonable warning thereof has been given or the
12 injured party should reasonably have known that no
13 lifeguard was provided at the time;
- 14 (2) Any form of diving into water from other than a diving
15 board or diving platform, or at any place or from any
16 structure where diving is prohibited and reasonable
17 warning thereof has been given;
- 18 (3) Rock climbing; and
- 19 (4) Animal riding, including equestrian competition,
20 archery, bicycle racing or jumping, mountain
21 bicycling, boating, cross-country and downhill skiing,
22 hang gliding, kayaking, motorized vehicle racing, off-



1 road motorcycling or all-terrain driving of any kind,
2 orienteering, pistol and rifle shooting, racketeering,
3 rodeo, spelunking, sky diving, sport parachuting,
4 paragliding, sports in which it is reasonably
5 foreseeable that there will be rough bodily contact
6 with one or more participants, surfing, trampolining,
7 tree climbing, tree rope swinging, waterskiing, white
8 water rafting, windsurfing, and zipline riding. For
9 the purposes of this paragraph, the term "mountain
10 bicycling" shall not include riding a bicycle on paved
11 pathways, roadways, or sidewalks."

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

15 ""Recreational purpose" includes but is not limited to any
16 of the following, or any combination thereof: hunting, fishing,
17 swimming, surfing, windsurfing, water skiing, boating, white
18 water rafting, kayaking, camping, picnicking, hiking,
19 orienteering, spelunking, pleasure driving, motorized vehicle
20 racing, off-road motorcycling or all-terrain driving of any
21 kind, nature study, [~~water skiing,~~] winter sports, [~~and~~]
22 including cross-country and downhill skiing, animal riding,



1 including equestrian competition and rodeo, archery, bicycle
2 racing or jumping, mountain bicycling, pistol and rifle
3 shooting, racketeering, sky diving, sport parachuting,
4 paragliding, hang gliding, trampolining, rock climbing, tree
5 climbing, tree rope swinging, zipline riding, and viewing or
6 enjoying historical, archaeological, scenic, or scientific
7 sites."

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

11 SECTION 5. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

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

14

INTRODUCED BY: 

By Request



S.B. NO. 1285

Report Title:

Hazardous Recreational Activity; Government Agencies; Private Landowners; Limited Liability

Description:

Grants immunity to state and county agencies and employees from liability for injury or damage to persons or property arising out of hazardous recreational activities. Specifies the recreational activities giving rise to injury or damage from which private landowners are granted only limited liability under current law.

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

