
A BILL FOR AN ACT

RELATING TO TORT LIABILITY.

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

1 SECTION 1. The purpose of this Act is to extend coverage
2 and make permanent liability protections for warning signs for
3 outdoor recreation on public lands by amending Act 82, Session
4 Laws of Hawaii 2003, as amended.

5 Act 82, which will sunset on June 30, 2014, established a
6 process by which a legally adequate warning system could be
7 developed for improved public lands. The legislature finds that
8 Act 82 has increased public safety and protects the State and
9 counties from unlimited liability arising out of recreational
10 activities on public lands and, therefore, should be made
11 permanent.

12 Additionally, this Act extends the conclusive presumption
13 of signage as legally adequate warning of dangerous "non-
14 natural" conditions on unimproved land.

15 SECTION 2. Act 82, Session Laws of Hawaii 2003, as amended
16 by section 1 of Act 144, Session Laws of Hawaii 2008, is amended
17 by amending section 2 to read as follows:



1 "SECTION 2. Chapter 663, Hawaii Revised Statutes, is
2 amended by adding a new part to be appropriately designated and
3 to read as follows:

4 **"PART . LIMITATIONS ON PUBLIC ENTITY LIABILITY IN ACTIONS**
5 **BASED UPON DUTY TO WARN OF NATURAL AND NON-NATURAL CONDITIONS**

6 **§663- Definitions.** As used in this part:

7 "Board" means the board of land and natural resources.

8 "Improved public lands" means lands designated as part of
9 the state park system, parks, and parkways under chapter 184, or
10 as part of a county's park system, and lands which are part of
11 the Hawaii statewide trail and access system under chapter 198D,
12 excluding buildings and structures constructed upon such lands.
13 For purposes of this part, "improved public lands" excludes
14 ocean and submerged lands.

15 "Public entity" means "government entity" as defined in
16 section 663-10.5.

17 **§663- Conclusive presumptions relating to duty of public**
18 **entities to warn of dangers on [~~improved~~] public lands.** (a) A
19 sign or signs warning of dangerous natural conditions on
20 improved public lands or of dangerous non-natural conditions on
21 unimproved public lands shall be conclusively presumed to be
22 legally adequate warning of the dangerous [~~natural~~] conditions



1 of which the sign or signs warn, if the State or a county posts
2 a sign or signs warning of the dangerous [~~natural~~] conditions
3 and the design and placement of the warning sign or signs are
4 approved by the board. The board shall consult the risk
5 assessment working group established by chapter 171, prior to
6 approving the design and placement of a warning sign pursuant to
7 this section.

8 (b) The State or a county may submit to the board a
9 comprehensive plan for warning of dangerous natural conditions
10 at a particular area of improved public lands[~~-~~] or of dangerous
11 non-natural conditions on unimproved public lands. The board
12 shall review [~~the~~] any plan for adequacy of the warning as well
13 as the design and placement of the warning signs, devices, or
14 systems. The board shall consult with the risk assessment
15 working group before approving [~~the~~] a plan. The risk
16 assessment working group shall seek public comment on [~~the~~] any
17 plan. In the event that the board after consulting with the
18 risk assessment working group approves [~~the~~] a plan for a
19 particular area of improved public lands[~~-~~] or unimproved public
20 lands, and the State or a county posts the warnings provided for
21 in the approved plan, then the warning signs, devices, or
22 systems shall be conclusively presumed to be legally adequate



1 warning of [~~all~~] the dangerous [natural] conditions [on the
2 improved public lands.] of which the sign or signs warn.

3 (c) The State or a county shall have no duty to warn of
4 dangerous natural conditions on unimproved public lands.

5 (d) If a warning sign, device, or system is posted or
6 established in accordance with this section on unimproved public
7 lands[-] warning of dangerous natural conditions, the posting or
8 establishment of the warning sign, device, or system shall not
9 create a duty on the part of the State or county to warn of
10 other dangerous natural conditions on unimproved public lands or
11 to place or establish an additional warning sign, device, or
12 system in other locations on the unimproved public lands.

13 (e) The State and the counties shall implement and
14 maintain a sign inspection program in which a park caretaker or
15 other authorized person conducts documented inspections of all
16 signs in the park or trail area or particular area of unimproved
17 public land on a quarterly or more frequent basis.

18 Records shall be kept under the sign inspection program
19 which document the date of each sign inspection and whether the
20 particular sign inspected was in place, free of vandalism, and
21 legible. The State and the counties shall annually provide the

1 board with a copy of the documentation of all sign inspections
2 under the sign inspection program.

3 The conclusive presumption provided by this section shall
4 continue for any sign posted pursuant to this section for a
5 period of one hundred twenty days after the last inspection that
6 documented that the sign was in place and legible, after which
7 the presumption shall lapse until the time at which the sign is
8 subsequently inspected and documented to be in place and in
9 legible condition.

10 In any circumstance in which the conclusive presumption
11 lapses because of the lack of a documented inspection, the
12 presumption shall be reestablished if the State or county, as
13 the case may be, proves by a preponderance of the evidence that
14 at the time of the incident at issue, the sign was in place and
15 in legible condition.

16 (f) The board shall adopt rules pursuant to chapter 91
17 establishing standards to guide the department of land and
18 natural resources and the risk assessment working group in the
19 general design and placement of warning signs; provided that
20 chapter 91 shall not apply to any other process or action
21 undertaken pursuant to this part.



1 (g) The State and the counties shall implement an accident
2 reporting and record keeping program whereby all known accidents
3 in park and trail areas and particular areas of unimproved
4 public land where non-natural conditions exist are documented on
5 an accident report form, and all such accident reports are kept
6 on a permanent basis. The risk assessment working group shall
7 review and use accident reports kept as part of this program as
8 part of its consultation to the board under this section."

9 SECTION 3. Act 82, Session Laws of Hawaii 2003, is amended
10 by amending section 171- , Hawaii Revised Statutes, in section
11 3 to read as follows:

12 "**§171- Risk assessment working group.** [~~a~~] There is
13 established a risk assessment working group that shall be
14 administratively attached to the department. The risk
15 assessment working group shall provide consultation to the board
16 regarding the design and placement of warning signs, devices, or
17 systems on improved public lands as defined in section 663- [~~r~~]
18 and unimproved public lands, including any comprehensive plan
19 submitted by the State, a county, or managing entity, to the
20 board for approval. The risk assessment working group shall
21 consist of the following members, who shall serve without
22 compensation:



- 1 (1) The chairperson of the board, or designee;
- 2 (2) The mayor of each county, or designee;
- 3 (3) The administrators of the department's division of
- 4 forestry and wildlife and the division of state parks,
- 5 or their designees;
- 6 (4) The attorney general, or designee; and
- 7 (5) A person appointed by the chairperson of the board
- 8 knowledgeable in warning sign design."

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

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

15 SECTION 5. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 6. This Act shall take effect on June 29, 2014.

18



Report Title:

Public Land Liability

Description:

Makes permanent Act 82, Session Laws of Hawaii 2003, as amended, relating to the limitations of liability for public entities based on the duty to warn of dangers on public lands. Extends the conclusive presumption of signage as legally adequate warning of dangerous non-natural conditions on unimproved public lands. (SD1)

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