

JAN 17 2020

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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 article XII, section  
2 7 of the Constitution of the State of Hawaii requires the State  
3 to protect and enforce the reasonable exercise of Native  
4 Hawaiian traditional and customary rights. The legislature  
5 further finds that Native Hawaiians are legally entitled to  
6 engage in the reasonable exercise of these rights and associated  
7 practices on both publicly- and privately-owned lands that are  
8 less than fully developed, regardless of whether or not they are  
9 granted express permission by landowners.

10           However, notwithstanding the rights of Native Hawaiian  
11 cultural practitioners, public and private landowners and  
12 property managers with liability concerns may refuse to  
13 accommodate practitioners' access to sites and resources on  
14 lands under their ownership or control. As a result, in order  
15 to exercise their constitutional right to reasonably engage in  
16 Native Hawaiian traditional and customary practices,



1 practitioners often risk potential conflict with landowners or  
2 property managers and face potential citation and even arrest.

3       The legislature finds that although there are statutory  
4 liability protections for private landowners who allow  
5 recreational users to access their lands free of charge,  
6 liability concerns regarding the scope of these protections  
7 continue to result in the denial of access for cultural  
8 practitioners seeking to enter private lands. Additionally, the  
9 legislature finds that existing liability protections for  
10 landowners who allow recreational access and use of private  
11 lands do not extend to public lands or landowners.

12       Accordingly, the purpose of this Act is to provide  
13 liability protections for public and private landowners who  
14 expressly allow access to and use of their lands to  
15 practitioners of Native Hawaiian traditional and customary  
16 practices for purposes of engaging in those practices.

17       SECTION 2. The Hawaii Revised Statutes is amended by  
18 adding a new chapter to title 28 to be appropriately designated  
19 and to read as follows:



1 "CHAPTER

2 LANDOWNER LIABILITY FOR ACCESS BY NATIVE HAWAIIAN TRADITIONAL  
3 AND CUSTOMARY PRACTITIONERS

4 § -1 Purpose. The purpose of this chapter is to  
5 encourage owners of land to make land and water areas available  
6 for the exercise of Native Hawaiian traditional and customary  
7 rights and associated practices by limiting landowner liability  
8 toward persons entering thereon for those purposes.

9 § -2 Definitions. As used in this chapter:

10 "Charge" means the admission price or fee asked in return  
11 for invitation or permission to enter or go upon the land.

12 "Cultural practitioner" means any person who is on or about  
13 the premises that the owner of land either directly or  
14 indirectly invites or permits, without charge, entry onto the  
15 property for the purpose of engaging in a Native Hawaiian  
16 traditional and customary practice.

17 "Land" means land, roads, water, watercourses, private ways  
18 and buildings, structures, and machinery or equipment when  
19 attached to realty, other than land owned by the government that  
20 are open to the public.



1 "Owner" means the possessor of a fee interest, a tenant,  
2 lessee, occupant, or person in control of the premises,  
3 including private individuals, corporations, trusts, and public  
4 entities.

5 "Native Hawaiian traditional and customary practice" means  
6 any practice that is exercised pursuant to article XII, section  
7 7 of the Constitution of the State.

8 **§ -3 Duty of care of owner limited.** (a) Except as  
9 specifically recognized by or provided in section -6, an  
10 owner of land owes no duty of care to keep the premises safe for  
11 entry or use by others for purposes of engaging in any Native  
12 Hawaiian traditional and customary practice, or to give any  
13 warning of a dangerous condition, use, structure, or activity on  
14 the premises to any persons entering for that purpose, or to  
15 persons entering for a purpose in response to a cultural  
16 practitioner who requires assistance, either direct or indirect,  
17 including but not limited to rescue, medical care, or other form  
18 of assistance.

19 (b) For purposes of this chapter, a statement or assertion  
20 that a person is seeking entry or use of the premises to engage  
21 in a Native Hawaiian traditional and customary practice shall be



1 sufficient to establish that the entry or use of the premises by  
2 that person is for the purpose of engaging in that practice.

3       **§ -4 Liability of owner limited.** (a) Except as  
4 specifically recognized by or provided in section -6, an  
5 owner of land who either directly or indirectly invites or  
6 permits without charge any person to use the property for  
7 purposes of engaging in a Native Hawaiian traditional and  
8 customary practice does not:

9       (1) Extend any assurance that the premises are safe for  
10 any purpose;

11       (2) Confer upon the person the legal status of an invitee  
12 or licensee to whom a duty of care is owed;

13       (3) Assume responsibility for, or incur liability for, any  
14 injury to person or property caused by an act of  
15 omission or commission of those persons; and

16       (4) Assume responsibility for, or incur liability for, any  
17 injury to person or persons who enter the premises in  
18 response to an injured cultural practitioner.

19       (b) An owner of land who is required or compelled to  
20 provide access or parking for access through or across the  
21 owner's property because of state or county land use, zoning, or



1 planning law, ordinance, rule, ruling, or order, to reach  
2 property used for the purpose of engaging in a Native Hawaiian  
3 traditional and customary practice shall be afforded the same  
4 protection as to that access, including parking for the access,  
5 as an owner of land who invites or permits any person to use  
6 that owner's property for the purpose of engaging in a Native  
7 Hawaiian traditional and customary practice under  
8 subsection (a).

9       **§ -5 Exceptions to limitations.** Nothing in this chapter  
10 limits in any way any liability that otherwise exists:

11       (1) For wilful or malicious failure to guard or warn  
12             against a dangerous condition, use, or structure that  
13             the owner knowingly creates or perpetuates and for  
14             wilful or malicious failure to guard or warn against a  
15             dangerous activity that the owner knowingly pursues or  
16             perpetuates;

17       (2) For injury suffered in any case where the owner of  
18             land charges the person or persons who enter or go on  
19             the land for the use thereof, except that in the case  
20             of land leased to the State or a political subdivision  
21             thereof, any consideration received by the owner for



1           that lease shall not be deemed a charge within the  
2           meaning of this section; or

3           (3) For injuries suffered by a house guest while on the  
4           owner's premises, even though the injuries were  
5           incurred by the house guest while engaged in a Native  
6           Hawaiian traditional and customary practice.

7           § -6 **Persons using land.** Nothing in this chapter shall  
8 be construed to:

9           (1) Create a duty of care or ground of liability for  
10          injury to persons or property; or

11          (2) Relieve any person using the land of another for the  
12          purposes of engaging in a Native Hawaiian traditional  
13          and customary practice from any obligation that the  
14          person may have in the absence of this chapter to  
15          exercise care in the use of the land or in the conduct  
16          of activities on the land, or from the legal  
17          consequences of failure to employ that care."



1 SECTION 3. This Act shall take effect upon its approval.

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INTRODUCED BY:   
By Request





# S.B. NO. 2195

**Report Title:**

Office of Hawaiian Affairs (OHA) Package; Landowner Liability;  
Native Hawaiian Traditional and Customary Practices

**Description:**

Provides liability protections for public and private landowners who expressly allow access and use of their land to practitioners of Native Hawaiian traditional and customary practices.

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