

ACT 190

S.B. NO. 865

A Bill for an Act Relating to Public Land Liability Immunity.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Millions of residents and visitors use our public beaches and the adjacent ocean for recreational purposes on a yearly basis. Unfortunately, in some instances drownings and other serious injuries have resulted from these activities. The counties have largely had to deal with the liability arising from the injuries and the resulting lawsuits. The legislature finds that counties need protection from liability arising from dangerous natural conditions in the ocean adjacent to public beach parks. The legislature finds that it is necessary to strike an equitable balance between the privilege of residents and visitors alike to enjoy public beaches in a responsible manner and the duty of the government to take reasonable measures to protect citizens from harm by providing adequate warning. Accordingly, the purpose of this Act is to establish a process in which the State and counties can provide both meaningful and legally adequate warnings to the public regarding

extremely dangerous natural conditions in the ocean adjacent to public beach parks. Specifically, this Act establishes a process by which public entities are provided protection from liability when they have provided adequate warning to the public through the design and placement of warning signs in our beach parks. The legislature believes that this Act will provide a process by which a legally adequate warning system can be developed at public beach parks which will increase public safety, reduce ocean-related accidents, and protect the State and counties from the unlimited liability they face with regard to activities in the ocean and at public beaches.

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

“§663- Conclusive presumptions relating to duty of public entities to warn of dangers at public beach parks. (a) The State or county operating a public beach park shall have a duty to warn the public specifically of dangerous shorebreak or strong current in the ocean adjacent to a public beach park if these conditions are extremely dangerous, typical for the specific beach, and if they pose a risk of serious injury or death.

(b) A sign or signs warning of dangerous shorebreak or strong current shall be conclusively presumed to be legally adequate to warn of these dangerous conditions, if the State or county posts a sign or signs warning of the dangerous shorebreak or strong current and the design and placement of the warning sign or signs has been approved by the chairperson of the board of land and natural resources. The chairperson shall consult the governor’s task force on beach and water safety prior to approving the design and placement of the warning sign or signs.

(c) A sign or signs warning of other extremely dangerous natural conditions in the ocean adjacent to a public beach park shall be conclusively presumed to be legally adequate to warn of the dangerous natural conditions, if the State or county posts a sign or signs warning of the extremely dangerous natural condition and the design and placement of the sign or signs have been approved by the chairperson of the board of land and natural resources. The chairperson shall consult the task force on beach and water safety prior to issuing an approval of the design and placement of a warning sign or signs pursuant to this section.

(d) The State or county operating a public beach park may submit a comprehensive plan for warning of dangerous natural conditions in the ocean adjacent to a public beach park to the chairperson of the board of land and natural resources who shall review the plan for adequacy of the warning as well as the design and placement of the warning signs, devices, or systems. The chairperson shall consult with the task force on beach and water safety prior to issuing an approval of the plan. The task force on beach and water safety may seek public comment on the plan. In the event that the chairperson approves the plan for the particular beach park after consulting with the task force and the State or county posts the warnings provided for in the approved plan, then the warning signs, devices, or systems shall be conclusively presumed to be legally adequate to warn for all dangerous natural conditions in the ocean adjacent to the public beach park.

(e) Neither the State nor a county shall have a duty to warn on beach accesses, coastal accesses, or in areas that are not public beach parks of dangerous natural conditions in the ocean.

(f) Neither the State nor any county shall have a duty to warn of dangerous natural conditions in the ocean other than as provided in this section.

(g) In the event that a warning sign, device, or system posted or established in accordance with this section is vandalized, otherwise removed, or made illegible,

the conclusive presumption provided by this section shall continue for a period of five days from the date that the vandalism, removal, or illegibility is discovered by the State or county. The State or county operating a public beach park shall maintain a record regarding each report of vandalism, removal, or illegibility that results in the replacement of a warning sign, device, or system at a State or county public beach park. The record shall include the date and time of the reporting and the replacement of the warning sign, device, or system. The State and county shall provide a copy of the record annually to the chairperson of the board of land and natural resources and the task force on beach and water safety.

(h) The chairperson shall consider the needs of the public to be warned of potentially dangerous conditions in the ocean adjacent to a public beach park prior to issuing an approval for the design and placement of a warning sign or a comprehensive plan. The chairperson may require warning devices or systems in addition to the signing before approving the design and placement of a warning sign or a comprehensive plan. The approval of the design and placement of a warning sign, device, system or comprehensive plan provided in this section shall be a discretionary decision under chapter 662.

(i) Chapter 91, Hawaii Revised Statutes, shall not apply to any process, including any action taken by the chairperson, established or made pursuant to this section.

(j) Nothing in this section shall be construed to have an impact upon governmental liability for the performance of rescue services or duties and responsibilities of lifeguards other than the duty to warn as set forth in this section.”

SECTION 3. There is established the task force on beach and water safety which shall be administratively attached to the department of land and natural resources. The task force shall provide consultation to the chairperson of the board of land and natural resources regarding the design and placement of warning signs, devices, or systems at public beach parks including any comprehensive plan submitted by the State or county operating a public beach park to the chairperson of the board of land and natural resources for approval. The task force shall consist of the following members, who shall serve without compensation:

- (1) The chairperson of the board of land and natural resources, or a designated representative;
- (2) The director of business, economic development, and tourism, or a designated representative;
- (3) The chairperson of the department of oceanography at the University of Hawaii at Manoa, or a designated representative; and
- (4) Four persons appointed by the governor, each of whom shall be publicly employed water safety personnel; provided that the governor shall appoint one person from each of the respective counties.

The chairperson of the board of land and natural resources shall serve as chairperson of the task force. The task force shall submit a report of its recommendations to the legislature and the governor no later than twenty days prior to the convening of the 1997, 1998, and 1999 Regular Session.

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

SECTION 5. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 6. New statutory material is underscored.¹

SECTION 7. This Act shall take effect on July 1, 1996; provided that this Act shall be repealed on June 30, 1999.

(Approved June 17, 1996.)

Note

1. Edited pursuant to HRS §23G-16.5.