

## ACT 152

S.B. NO. 1603

A Bill for an Act Relating to Liability.

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

SECTION 1. The legislature finds that the limitations on state and county liability have proven to be beneficial to the state and county governments, as well as the public. The liability protections have reduced the exposure of the state and county governments to substantial damages and, as a result, have allowed the state and county governments to keep recreational areas and public beach parks with potentially dangerous conditions open to the public. The legislature further finds that state and county compliance with the statutorily required public warning of dangerous conditions at recreational areas and public beach parks has contributed to an improvement in public safety in these areas, which justifies making the current liability exemptions for state and county governments relating to recreational areas and public beach parks and actions of county lifeguards permanent or extending their protections.

The legislature also finds that it is necessary to conform the statute of limitations for claims for damage and injury against the counties with the limitations period applicable to the State and private individuals generally to ensure fair and consistent application of the law.

## PART I

SECTION 2. The purpose of part I of this Act is to make permanent or to extend certain liability protections for state and county governments.

SECTION 3. Act 190, Session Laws of Hawaii 1996, as amended by Act 101, Session Laws of Hawaii 1999, as amended by Act 170, Session Laws of Hawaii 2002, is amended by amending section 7 to read as follows:

“SECTION 7. This Act shall take effect on July 1, 1996[; ~~provided that this Act shall be repealed on June 30, 2007.~~”

SECTION 4. Act 170, Session Laws of Hawaii 2002, is amended by amending section 5 to read as follows:

“SECTION 5. This Act shall take effect upon its approval; provided that section 1 of this Act shall be repealed on June 30, [2007.] 2010.”

SECTION 5. Act 82, Session Laws of Hawaii 2003, is amended by amending section 8 to read as follows:

“SECTION 8. This Act shall take effect on July 1, 2003, and shall be repealed on June 30, [2008-] 2010.”

SECTION 6. (a) There shall be established a task force within the department of the attorney general to examine the effectiveness of, collect sufficient data relating to, and provide to the legislature information on Act 190, Session Laws of Hawaii 1996, as amended; Act 170, Session Laws of Hawaii 2002; and Act 82, Session Laws of Hawaii 2003.

(b) The task force shall include members as follows:

- (1) The attorney general or the attorney general’s designee as chair of the task force;
- (2) The president of the Hawaii state association of counties or the president’s designee;
- (3) The mayor of the city and county of Honolulu or the mayor’s designee;
- (4) The mayor of the county of Maui or the mayor’s designee;
- (5) The mayor of the county of Hawaii or the mayor’s designee;
- (6) The mayor of the county of Kauai or the mayor’s designee; and
- (7) The executive director of the Consumer Lawyers of Hawaii or the executive director’s designee.

(c) The task force shall:

- (1) Collect data on and examine the effectiveness of providing lifeguards conditional liability protection for lifeguard services at state beach parks, except for gross negligence and wanton acts or omissions;
- (2) Collect data on and examine the effectiveness and adequacy of warning signs at public beach parks in increasing public safety, reducing ocean-related accidents, and protecting the State and counties from unlimited liability with regard to activities in the ocean and at public beaches; and
- (3) Collect data on and examine the effectiveness and adequacy of warning signs at public recreational lands in increasing public safety, and protecting the State and counties from unlimited liability arising out of recreational activities on public lands.

(d) The task force shall submit its findings and recommendations, including any proposed legislation, to the legislature no later than twenty days prior to the convening of the 2009 regular session.

## PART II

SECTION 7. The purpose of part II of this Act is to conform the statute of limitations for injuries or damages involving counties with the limitations applicable generally to the State and private citizens.

SECTION 8. Section 46-72, Hawaii Revised Statutes, is amended to read as follows:

“**§46-72 Liability for injuries or damages; notice [~~of injuries~~].** Before the county shall be liable for damages to any person for injuries to person or property received upon any of the streets, avenues, alleys, sidewalks, or other public places of the county, or on account of any negligence of any official or employee of the county, the person [sø] injured, or the owner or person entitled to the possession, occupation, or use of the property [sø] injured, or someone [in] on the person’s behalf, [shall,] within [~~six months~~] two years after the injuries [~~are received,~~]

accrued shall give the individual identified in the respective county's charter, or if none is specified, the chairperson of the council of the county or the [city] clerk of [Honolulu] the county in which the injuries occurred, notice in writing of the injuries and the specific damages resulting, stating fully [in the notice] when, where, and how the injuries or damage occurred, the extent [thereof,] of the injuries or damages, and the amount claimed [therefor]."

### PART III

SECTION 9. The purpose of part III of this Act is to authorize the State to indemnify the counties, under certain circumstances.

SECTION 10. Chapter 46, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§46- Indemnification of county agencies.** (a) To receive county aid, assistance, support, benefits, services, and interests in or rights to use county property, a state agency may agree in writing to an indemnity provision by which the State agrees to indemnify, defend, and hold harmless a county agency, its officers, agents, and employees when:

- (1) The governor approves the State's proposed indemnification; and
- (2) The comptroller, pursuant to section 41D-8.5, has obtained an insurance policy or policies in an amount sufficient to cover the liability of the State that reasonably may be anticipated to arise under the indemnity provision, or has determined that it is not in the best interest of the State to obtain insurance.

(b) An indemnity provision not in strict compliance with this section shall not give rise to a claim against the State under chapter 661 or otherwise waive the State's sovereign immunity."

SECTION 11. Section 41D-8.5, Hawaii Revised Statutes, is amended to read as follows:

**"§41D-8.5 Insurance for indemnification.** The comptroller may:

- (1) Obtain sufficient loss insurance to cover the liability of the State that may arise from indemnity provisions agreed to pursuant to section 29-15.5; [and]
  - (2) Obtain sufficient loss insurance to indemnify, defend, and hold harmless a county providing assistance, services, rights, or permission to use county property to a state agency under an indemnity agreement provision pursuant to section 46- ; and
- [(2)] (3) Obtain appropriate and sufficient reinsurance to cover the liability of a captive insurance company established pursuant to section 41D-2."

### PART IV

SECTION 12. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 13. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

## **ACT 152**

**SECTION 14.** This Act shall take effect upon its approval; provided that sections 2, 3 and 4 of this Act shall take effect June 29, 2007.

(Approved June 7, 2007.)

### **Note**

1. Edited pursuant to HRS §23G-16.5.