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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 it is in the best		
2	interest of the public to provide certainty in the law with		
3	respect to the legal duties and obligations of landowners		
4	arising from the inherent risks of land failures caused by		
5	natural conditions to persons and property outside the		
6	boundaries of their land when these risks have not been created		
7	or increased by artificial improvements or alterations to the		
8	land.		
9	The purpose of this Act is to codify the common law that		
10	currently exists in Hawaii with respect to the legal duties and		
11	obligations pertaining to damages and injuries caused by natural		
12	conditions to property and persons outside the land.		
13	PART I		
14	SECTION 2. Chapter 663, Hawaii Revised Statutes, is		
15	amended by adding a new part to be appropriately designated and		
16	to read as follows:		
17	"PART . UNIMPROVED LAND; LIABILITY		
18	<pre>\$663- Definitions. As used in this part: HB951 SD1.DOC *HB951 SD1.DOC* *HB951 SD1.DOC*</pre>		

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1	"Natu	arally occurring land failure" means any movement of	
2	land, incl	luding a landslide, debris flow, mudslide, creep,	
3	subsidence	e, rock fall, and any other gradual or rapid movement	
4	of land, t	that is not caused by human alterations to or	
5	improvemer	nts constructed upon the land.	
6	"Unimproved land" means any land upon which there is no		
7	improvement, construction of any structure, building, facility,		
8	or alterat	tion of the land by grading, dredging, or mining that	
9	would caus	se a permanent change in the land area on which it	
10	occurs and	d that would change the basic natural condition that	
11	exists on	the land. Land remains unimproved land	
12	notwithstanding the following:		
13	(1)	Minor improvements, including the installation or	
14		maintenance of utility poles and signage;	
15	(2)	Minor alterations undertaken for the preservation or	
16		prudent management of the unimproved land, including	
17		the installation or maintenance of fences, trails, or	
18		pathways;	
19	(3)	Maintenance activities, including forest plantings and	
20		weed, brush, rock, boulder, or tree removal; or	
21	(4)	The removal or securing of rocks or boulders	
22		undertaken to reduce risk to downslope properties.	
	HB951 SD1.		

\*HB951 SD1.DOC\* \*HB951 SD1.DOC\*

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1	§663- Land failure on unimproved land caused by natural
2	condition; liability. A landowner shall not be liable for any
3	damage, injury, or harm to property outside the boundaries of
4	the landowner's land caused by any naturally occurring land
5	failure originating on unimproved land; provided that if a
6	dangerous condition is known, or by the exercise of ordinary
7	care, could have been known by the landowner, the landowner has
8	a duty to exercise reasonable care in the maintenance of the
9	property to prevent any damage, injury, or harm to property on
10	or outside of the landowner's property; provided further that a
11	landowner shall remain liable for damages proximately caused by
12	negligence or wanton acts or omissions committed in the course
13	of any activities on the unimproved land."
14	PART II
15	SECTION 3. Chapter 46, Hawaii Revised Statutes, is amended
16	by adding a new section to be appropriately designated and to
17	read as follows:
18	" <b>§46-</b> Development in hazardous areas. (a)
19	Notwithstanding any law to the contrary, it shall be a condition
20	precedent to approval of any county subdivision, development
21	plan, or building permit, to require a subdivider, developer, or

HB951 SD1.DOC \*HB951 SD1.DOC\* \*HB951 SD1.DOC\*

1	builder of	f a new residential, commercial, or industrial
2	structure	, to:
3	(1)	Perform a study to determine the risks of rockfalls or
4		landslides if any portion of the subdivision or
5		development project includes hillsides or cliffs with
6		a slope grade of twenty per cent or greater that poses
7		or may pose a hazard to any to any person or structure
8		on or adjacent to the subdivision or development
9		project site;
10	(2)	To perform a risk assessment to determine whether and
11		to what extent conditions on an adjacent property pose
12		a risk of harm to the proposed subdivision,
13		development, future homeowners, or persons in the
14		vicinity thereof, if the adjacent property includes
15		hillsides or cliffs with a slope grade of twenty per
16		cent or greater immediately upslope from the
17		subdivision or development project site;
18	(3)	Create hazard buffer zones or implement other
19		appropriate mitigation measures in areas of the
20		subdivision or development site where a rockfall or
21		landslide hazard is determined or is suspected to
22		exist, that are sufficient to protect the health and
	HB951 SD1.DOC *HB951 SD1.DOC* *HB951 SD1.DOC*	

1		safety of future homeowners and persons in the
2		vicinity of the property, and provide a written
3		disclosure of those risks to all potential homeowners
4		that will run with the land; and
5	(4)	For purposes of this section, any determination of the
6		existence of a hazard or risk of harm from hillsides
7		or cliffs with a slope grade of twenty per cent or
8		greater shall be performed by a licensed geotechnical
9		professional.
10	(b)	For the purposes of this section, "subdivision" means
11	any land	that is divided or is proposed to be divided for the
12	purpose o	f disposition into two or more lots, parcels, units, or
13	interests	and also includes any land whether contiguous or not,
14	if two or	more lots are offered as part of a common promotional
15	plan of a	dvertising and sale.
16	(C)	This section shall apply to the plan of any
17	subdivisi	on or development that has not been approved by the
18	respectiv	e counties prior to July 1, 2009."
19		PART III
20	SECT	ION 4. This Act does not affect rights and duties that
21	matured,	penalties that were incurred, and proceedings that were
22	begun, be	fore its effective date.
	HB951 SD1 *HB951 SD *HB951 SD	1.DOC*

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1	SECTION 5. If any provision of this Act, or the
2	application thereof to any person or circumstance is held
3	invalid, the invalidity does not affect other provisions or
4	applications of the Act that can be given effect without the
5	invalid provision or application, and to this end the provisions
6	of this Act are severable.
7	SECTION 6. New statutory material is underscored.
8	SECTION 7. This Act shall take effect on January 1, 2046.

Report Title:

Landowner Liability; Unimproved Land

#### Description:

Relieves landowner of liability for any damage, injury, or harm to persons or property outside the boundaries of the landowner's land caused by naturally occurring land failure originating on unimproved land, except for harm arising from negligent or wanton acts by the owner of the unimproved land. Requires, as part of the county approval process, a study to determine rockfall risks, a risk assessment to determine the extent of risk, and creation of a hazard buffer zone or other mitigation if a hazard exists, for any plan not approved prior to July 1, 2009. Effective 1/1/2046. (SD1)