

JAN 22 2015

A BILL FOR AN ACT

RELATING TO TORT LIABILITY.

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

1 SECTION 1. Chapter 662, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§662- Hazardous recreational activity; limited state
5 liability; limitation on damages. (a) Subject to subsections
6 (b) and (c), no state agency or employee of the State shall be
7 liable to:

- 8 (1) Any person who participates in a hazardous
9 recreational activity, including any person who
10 assists the participant; or
- 11 (2) Any spectator who knew or reasonably should have known
12 that the hazardous recreational activity created a
13 substantial risk of injury to the spectator and was
14 voluntarily in the place of risk, or having the
15 ability to do so, failed to leave the place of risk,
16 for any injury or damage to persons or property arising out of
17 the hazardous recreational activity.



- 1 (b) The injuries or damages described in subsection (a)
2 shall include those resulting from:
- 3 (1) Any act of the participant while engaged in the
4 hazardous recreational activity;
- 5 (2) The negligence of any participant of the hazardous
6 recreational activity;
- 7 (3) Equipment failure that occurs despite reasonable care
8 and maintenance;
- 9 (4) Any airborne projectile that is an inherent risk of
10 the hazardous recreational activity, including rocks,
11 trees, equipment, or human bodies, as applicable;
- 12 (5) Adverse weather conditions, including lightning, rain,
13 flooding, or heat;
- 14 (6) The participant's inability to safely participate in
15 the hazardous recreational activity because of the
16 participant's physical or mental limitations;
- 17 (7) A preexisting health condition; or
- 18 (8) Training or any other activity that the participant
19 undertakes in preparation for the hazardous
20 recreational activity.



1 (c) Notwithstanding subsections (a) and (b), this section
2 shall not limit liability that would otherwise exist for:

3 (1) Failure of the state agency or employee of the State
4 to guard or warn of a known dangerous condition or of
5 another hazardous recreational activity known to the
6 state agency or employee of the State that is not
7 reasonably assumed by the participant as inherently a
8 part of the hazardous recreational activity out of
9 which the injury or damage arose;

10 (2) Injury or damage suffered in any case where permission
11 to participate in the hazardous recreational activity
12 was granted for a specific fee. For the purposes of
13 this paragraph, the term "specific fee" shall not
14 include a fee or consideration charged for a general
15 purpose such as a general park admission charge, a
16 vehicle entry or parking fee, or an administrative or
17 group use application or permit fee, as distinguished
18 from a specific fee charged for participation in the
19 specific hazardous recreational activity out of which
20 the injury or damage arose;



- 1 (3) Injury or damage suffered to the extent proximately
2 caused by the negligent failure of the state agency or
3 employee of the State to properly construct or
4 maintain in good repair any structure, recreational
5 equipment or machinery, or substantial work or
6 improvement utilized in the hazardous recreational
7 activity out of which the injury or damage arose;
8 (4) Injury or damage suffered in any case where the state
9 agency or employee of the State promoted the
10 participation in or observance of a hazardous
11 recreational activity recklessly or with gross
12 negligence. For the purposes of this paragraph,
13 promotional literature or a public announcement or
14 advertisement that merely describes the available
15 facilities and services on the property shall not
16 constitute a reckless or grossly negligent promotion;
17 or
18 (5) An act of gross negligence by a state agency or
19 employee of the State that is the proximate cause of
20 the injury or damage sustained from participation in
21 the hazardous recreational activity;



1 provided that this subsection shall not be construed to create a
2 duty of care or basis of liability for personal injury or damage
3 to personal property.

4 (d) In situations where a state agency or employee are
5 liable under subsection (c), the maximum amount that may be
6 recovered from one or more state agencies and employees of the
7 State shall be:

8 (1) \$150,000 for any injury to one person in any single
9 incident; and

10 (2) \$600,000 for any injury to two or more persons in any
11 single incident; provided that no person may
12 individually recover more than \$150,000.

13 For purpose of this subsection:

14 (1) A state agency or employee of the State shall not be
15 liable either directly or by indemnification for
16 punitive or exemplary damages or for damages for
17 outrageous conduct; and

18 (2) An assignment of subrogation to recover damages paid
19 or payable for an injury shall not be deemed a
20 separate incident.



1 (e) As used in this section, the term "hazardous
2 recreational activity" means a recreational activity conducted
3 on property of a state agency that creates a substantial risk of
4 injury to a participant or a spectator, including but not
5 limited to:

6 (1) Water contact activities, except diving, in places
7 where or at a time when lifeguards are not provided
8 and reasonable warning thereof has been given or the
9 injured party should reasonably have known that no
10 lifeguard was provided at the time;

11 (2) Any form of diving into water from other than a diving
12 board or diving platform, or at any place or from any
13 structure where diving is prohibited and reasonable
14 warning thereof has been given;

15 (3) Rock climbing; and

16 (4) Animal riding, including equestrian competition,
17 archery, bicycle racing or jumping, mountain
18 bicycling, boating, cross-country and downhill skiing,
19 hang gliding, kayaking, motorized vehicle racing, off-
20 road motorcycling or all-terrain driving of any kind,
21 orienteering, pistol and rifle shooting, rocketeering,



1 rodeo, spelunking, sky diving, sport parachuting,
 2 paragliding, sports in which it is reasonably
 3 foreseeable that there will be rough bodily contact
 4 with one or more participants, surfing, trampolining,
 5 tree climbing, tree rope swinging, waterskiing, white
 6 water rafting, windsurfing, and zipline riding. For
 7 the purposes of this paragraph, the term "mountain
 8 bicycling" shall not include riding a bicycle on paved
 9 pathways, roadways, or sidewalks."

10 SECTION 2. This Act does not affect rights and duties that
 11 matured, penalties that were incurred, and proceedings that were
 12 begun before its effective date.

13 SECTION 3. New statutory material is underscored.

14 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: *Sen. D.C. Fisher*
 BY REQUEST OF
 ANOTHER PARTY



S.B. NO. 146

Report Title:

Hazardous Recreational Activity; State Agencies; Liability; Limitation on Damages

Description:

Grants immunity to state agencies and employees of the State from liability for injury or damage to persons or property arising out of hazardous recreational activities; and establishes limitations on damages when a state agency and employee of the State are liable due to failure to guard or warn of a known dangerous condition, permission to participate in the hazardous recreational activity was granted for a fee, State was negligent in construction or maintenance of structures or equipment used in the hazardous recreational activity, participation or observation of a hazardous recreational activity was promoted recklessly or with gross negligence, or there was an act of gross negligence.

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