

---

---

## A BILL FOR AN ACT

RELATING TO LIFEGUARDS.

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

1           SECTION 1. The legislature finds that the Hawaii tort law  
2 study group was established in 1997 by Senate Concurrent  
3 Resolution No. 256 to study Hawaii's tort system. The study  
4 group reported that "immunity is afforded to classes of persons  
5 or entities because it is in the public's best interests to do  
6 so," and conferring immunity upon a particular class of persons  
7 is often based upon whether the social values attached to  
8 encouraging the behavior of that group are of such great  
9 importance as to merit extraordinary protection from suit.

10           Among the criteria established by the study group for  
11 reviewing requests for immunity was a consideration that  
12 individuals engaging in inherently dangerous activities need to  
13 accept personal responsibility for their actions and the  
14 legislature, in determining whether or not to grant immunity,  
15 should weigh the financial cost to be borne by taxpayers if  
16 immunity were denied.



1           The legislature further finds that Act 170, Session Laws of  
2 Hawaii 2002, (Act 170) was enacted to provide immunity for  
3 county lifeguards, their employing county, and the State from  
4 liability against civil damages arising from any act or omission  
5 of the lifeguard while providing rescue, resuscitative, and  
6 other lifeguard services on the beach or in the ocean while in  
7 the scope of employment as a county lifeguard. Act 170 limited  
8 this exception from liability to render it inapplicable to a  
9 claim for civil damages resulting from a county lifeguard's  
10 gross negligence or wanton act or omission. The legislature  
11 intended that Act 170 would provide the State and counties with  
12 qualified immunity so that lifeguards could be stationed at  
13 dangerous beaches while appropriately limiting the lifeguards'  
14 and governmental exposure to liability.

15           Act 170 was enacted with a sunset provision to allow for  
16 "evaluation of this measure after sufficient experience has been  
17 obtained." Act 152, Session Laws of Hawaii 2007, extended the  
18 liability protections for county lifeguard services until  
19 June 30, 2010. These protections were again extended until  
20 June 30, 2014, by Act 81, Session Laws of Hawaii 2009, wherein  
21 the legislature noted that Act 170 "created a climate in which



1 lifeguard services could be provided by the counties without  
2 fear of liability, and, therefore, is a life-saving measure that  
3 should be extended."

4 The legislature finds that ample experience has been  
5 obtained to support the determination that the exception to  
6 liability for the actions of lifeguards should be made  
7 permanent.

8 Accordingly, the purpose of this Act is to reinstate the  
9 exception to liability for county lifeguards and to include the  
10 lifeguard's employing county under this exception.

11 SECTION 2. Section 663-1.5, Hawaii Revised Statutes, is  
12 amended to read as follows:

13 **"§663-1.5 Exception to liability.** (a) Any person who in  
14 good faith renders emergency care, without remuneration or  
15 expectation of remuneration, at the scene of an accident or  
16 emergency to a victim of the accident or emergency shall not be  
17 liable for any civil damages resulting from the person's acts or  
18 omissions, except for such damages as may result from the  
19 person's gross negligence or wanton acts or omissions.

20 (b) No act or omission of any rescue team or physician  
21 working in direct communication with a rescue team operating in



1 conjunction with a hospital or an authorized emergency vehicle  
2 of the hospital or the State or county, while attempting to  
3 resuscitate any person who is in immediate danger of loss of  
4 life, shall impose any liability upon the rescue team, the  
5 physicians, or the owners or operators of such hospital or  
6 authorized emergency vehicle, if good faith is exercised.

7 This section shall not relieve the owners or operators of  
8 the hospital or authorized emergency vehicle of any other duty  
9 imposed upon them by law for the designation and training of  
10 members of a rescue team or for any provisions regarding  
11 maintenance of equipment to be used by the rescue team or any  
12 damages resulting from gross negligence or wanton acts or  
13 omissions.

14 (c) Any physician or physician assistant licensed to  
15 practice under the laws of this State or any other state who in  
16 good faith renders emergency medical care in a hospital to a  
17 person, who is in immediate danger of loss of life, without  
18 remuneration or expectation of remuneration, shall not be liable  
19 for any civil damages, if the physician or physician assistant  
20 exercises that standard of care expected of similar physicians  
21 or physician assistants under similar circumstances. Any



1 physician who supervises a physician assistant providing  
2 emergency medical care pursuant to this section shall not be  
3 required to meet the requirements set forth in chapter 453  
4 regarding supervising physicians.

5 (d) Any person or other entity who as a public service  
6 publishes written general first aid information dealing with  
7 emergency first aid treatment, without remuneration or  
8 expectation of remuneration for providing this public service,  
9 shall not be liable for any civil damages resulting from the  
10 written publication of such first aid information except as may  
11 result from its gross negligence or wanton acts or omissions.

12 (e) Any person who in good faith, without remuneration or  
13 expectation of remuneration, attempts to resuscitate a person in  
14 immediate danger of loss of life when administering any  
15 automated external defibrillator, regardless of where the  
16 automated external defibrillator that is used is located, shall  
17 not be liable for any civil damages resulting from any act or  
18 omission except as may result from the person's gross negligence  
19 or wanton acts or omissions.

20 Any person, including an employer, who provides for an  
21 automated external defibrillator or an automated external



1 defibrillator training program shall not be vicariously liable  
2 for any civil damages resulting from any act or omission of the  
3 persons or employees who, in good faith and without remuneration  
4 or the expectation of remuneration, attempt to resuscitate a  
5 person in immediate danger of loss of life by administering an  
6 automated external defibrillator, except as may result from a  
7 person's or employer's gross negligence or wanton acts or  
8 omissions.

9 (f) Any physician or physician assistant who administers  
10 an automated external defibrillator program without remuneration  
11 or expectation of remuneration shall not be liable for any civil  
12 damages resulting from any act or omission involving the use of  
13 an automated external defibrillator, except as may result from  
14 the physician's or physician assistant's gross negligence or  
15 wanton acts or omissions.

16 (g) Any person who in good faith, without remuneration or  
17 expectation of remuneration, attempts to rescue a person in  
18 immediate danger of loss of life by use of a rescue tube,  
19 regardless of where the rescue tube that is used is located,  
20 shall not be liable for any civil damages resulting from any act



1 or omission except as may result from the person's gross  
2 negligence or wanton acts or omissions.

3 The owner or operator of any premises, property, or  
4 facility that is adjacent to navigable waters, where a rescue  
5 tube is located shall not be liable for any civil damages  
6 resulting from any act or omission relating to the storage,  
7 maintenance, or use of the rescue tube.

8 (h) This section shall not relieve any person, physician,  
9 physician assistant, or employer of:

10 (1) Any other duty imposed by law regarding the  
11 designation and training of persons or employees;

12 (2) Any other duty imposed by provisions regarding the  
13 maintenance of equipment to be used for resuscitation;  
14 or

15 (3) Liability for any damages resulting from gross  
16 negligence, or wanton acts or omissions.

17 (i) Any person qualified as a county lifeguard who renders  
18 rescue, resuscitative, or other lifeguard services without  
19 remuneration or expectation of remuneration on a beach or in the  
20 ocean while in the scope of employment as a county lifeguard,  
21 shall not be liable for civil damages resulting from the



1 person's acts or omissions while providing rescue,  
2 resuscitative, or other lifeguard services, except for damages  
3 that may result from the person's gross negligence or wanton  
4 acts or omissions. The provisions of this subsection shall also  
5 apply to the lifeguard's employing county.

6 [~~i~~] (j) For the purposes of this section:

7 "Automated external defibrillator program" means an  
8 appropriate training course that includes cardiopulmonary  
9 resuscitation and proficiency in the use of an automated  
10 external defibrillator.

11 "Good faith" includes but is not limited to a reasonable  
12 opinion that the immediacy of the situation is such that the  
13 rendering of care should not be postponed.

14 "Rescue team" means a special group of physicians, basic  
15 life support personnel, advanced life support personnel,  
16 surgeons, nurses, volunteers, or employees of the owners or  
17 operators of the hospital or authorized emergency vehicle who  
18 have been trained in basic or advanced life support and have  
19 been designated by the owners or operators of the hospital or  
20 authorized emergency vehicle to attempt to provide such support



1 and resuscitate persons who are in immediate danger of loss of  
2 life in cases of emergency.

3 "Rescue tube" means a flotation device used for water  
4 rescues that helps support the victim's and rescuer's weight."

5 SECTION 3. This Act does not affect rights and duties that  
6 matured, penalties that were incurred, and proceedings that were  
7 begun before its effective date.

8 SECTION 4. Statutory material to be repealed is bracketed  
9 and stricken. New statutory material is underscored.

10 SECTION 5. This Act shall take effect upon its approval.

11

INTRODUCED BY:

  
JAN 22 2021



# H.B. NO. 6605

**Report Title:**

County Lifeguards; Rescue, Resuscitative, or Other Lifeguard Services; Employing County; Exception to Liability

**Description:**

Establishes an exception to liability for a person qualified as a county lifeguard and the lifeguard's employing county if the lifeguard renders rescue, resuscitative, or other lifeguard services without remuneration or expectation of remuneration on a beach or in the ocean while in the scope of employment as a county lifeguard, for civil damages resulting from the person's acts or omissions while providing rescue, resuscitative, or other lifeguard services, except for damages that may result from the person's gross negligence or wanton acts or omissions.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

