

ACT 129

H.B. NO. 581

A Bill for an Act Relating to Tort Liability.

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

SECTION 1. Chapter 663, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§663- Recreational activity liability. (a) Any person who owns or operates a business providing recreational activities to the public, such as, without limitation, scuba or skin diving, sky diving, bicycle tours, and mountain climbing, shall exercise reasonable care to ensure the safety of patrons and the public, and shall be liable for damages resulting from negligent acts or omissions of the person which cause injury.

(b) Notwithstanding subsection (a), owners and operators of recreational activities shall not be liable for damages for injuries to a patron resulting from inherent risks associated with the recreational activity if the patron participating in the recreational activity voluntarily signs a written release waiving the owner or operator’s liability for damages for injuries resulting from the inherent risks. No waiver shall be valid unless:

- (1) The owner or operator first provides full disclosure of the inherent risks associated with the recreational activity; and
- (2) The owner or operator takes reasonable steps to ensure that each patron is physically able to participate in the activity and is given the necessary instruction to participate in the activity safely.

(c) The determination of whether a risk is inherent or not is for the trier of fact. As used in this section an “inherent risk”:

- (1) Is a danger that a reasonable person would understand to be associated with the activity by the very nature of the activity engaged in;
- (2) Is a danger that a reasonable person would understand to exist despite the owner or operator’s exercise of reasonable care to eliminate or minimize the danger, and is generally beyond the control of the owner or operator; and
- (3) Does not result from the negligence, gross negligence, or wanton act or omission of the owner or operator.”

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall apply only to causes of action based upon acts or omissions occurring after June 30, 1997.

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SECTION 4. This Act shall take effect on July 1, 1997.

(Approved June 16, 1997.)

Note

1. Edited pursuant to HRS §23G-16.5.