

ACT 82

H.B. NO. 1214

A Bill for an Act Relating to Public Land Liability.

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

SECTION 1. There is increasing public demand for outdoor recreation on public lands. Many of these lands are inherently dangerous and contain many potential risks, especially for those who are unprepared, participate in hazardous recreational activities, or choose to ignore warning signs. Unfortunately, in some instances, serious injuries have resulted. Uncertainty regarding the standard of care that must be exercised by the State or counties to prevent costly lawsuits may result in public recreational assets being closed.

To provide a remedy for this problem, a state risk assessment working group could be established to identify methods to mitigate potential risks. However, even the most carefully crafted risk assessment and management program will not eliminate all potential injuries associated with outdoor recreation. Risk management can mitigate risk through programs that include signage that warns the public of risks, but at best, risk management can only reduce exposure to a hazardous condition.

The legislature finds that it is in the best interests of the public to provide the State and counties with a conditional protection from liability arising from the inherent risks on public lands under their jurisdiction, that strikes an equitable balance between the personal responsibility of individuals engaged in recreational pursuits on public lands, and the government’s duty to protect its citizens from harm. The legislature further finds that allowing the State and counties to manage their risks on public lands will encourage the State and counties to take reasonable steps to protect their citizens from harm, and will also help to avoid the closure of recreational public lands.

The purpose of this Act is to establish a process in which the State and counties are provided protection from liability on improved public lands when the requirements of this Act are met.

SECTION 2. Chapter 663, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**“PART . LIMITATIONS ON PUBLIC ENTITY LIABILITY IN  
ACTIONS BASED UPON DUTY TO WARN OF NATURAL  
CONDITIONS**

**§663- Definitions.** As used in this part:

“Board” means the board of land and natural resources.

“Improved public lands” means lands designated as part of the state park system, parks, and parkways under chapter 184, or as part of a county’s park system, and lands which are part of the Hawaii statewide trail and access system under chapter 198D, excluding buildings and structures constructed upon such lands. For purposes of this part, “improved public lands” excludes ocean and submerged lands, and further excludes any public beach park falling within Act 190, Session Laws of Hawaii 1996, as amended by Act 101, Session Laws of Hawaii 1999.

“Public entity” means “government entity” as defined in section 663-10.5.

**§663- Conclusive presumptions relating to duty of public entities to warn of dangers on improved public lands.** (a) A sign or signs warning of dangerous natural conditions on improved public lands shall be conclusively presumed to be legally adequate warning of the dangerous natural conditions of which the sign or signs warn, if the State or a county posts a sign or signs warning of the dangerous natural conditions and the design and placement of the warning sign or signs are approved by the board. The board shall consult the risk assessment working group established by chapter 171, prior to approving the design and placement of a warning sign pursuant to this section.

(b) The State or a county may submit to the board a comprehensive plan for warning of dangerous natural conditions at a particular area of improved public lands. The board shall review the plan for adequacy of the warning as well as the design and placement of the warning signs, devices, or systems. The board shall consult with the risk assessment working group before approving the plan. The risk assessment working group shall seek public comment on the plan. In the event that the board after consulting with the risk assessment working group approves the plan for a particular area of improved public lands, and the State or a county posts the warnings provided for in the approved plan, then the warning signs, devices, or systems shall be conclusively presumed to be legally adequate warning of all dangerous natural conditions on the improved public lands.

(c) The State or a county shall have no duty to warn of dangerous natural conditions on unimproved public lands.

(d) If a warning sign, device, or system is posted or established in accordance with this section on unimproved lands, the posting or establishment of the warning sign, device, or system shall not create a duty on the part of the State or county to warn of other dangerous natural conditions on unimproved lands or to place or establish an additional warning sign, device, or system in other locations on the unimproved lands.

(e) The State and the counties shall implement and maintain a sign inspection program in which a park caretaker or other authorized person conducts documented inspections of all signs in the park or trail area on a quarterly or more frequent basis.

Records shall be kept under the sign inspection program which document the date of each sign inspection and whether the particular sign inspected was in place, free of vandalism, and legible. The State and the counties shall annually provide the board with a copy of the documentation of all sign inspections under the sign inspection program.

The conclusive presumption provided by this section shall continue for any sign posted pursuant to this section for a period of one hundred twenty days after the last inspection that documented that the sign was in place and legible, after which the presumption shall lapse until the time at which the sign is subsequently inspected and documented to be in place and in legible condition.

In any circumstance in which the conclusive presumption lapses because of the lack of a documented inspection, the presumption shall be reestablished if the

State or county, as the case may be, proves by a preponderance of the evidence that at the time of the incident at issue, the sign was in place and in legible condition.

(f) The board shall adopt rules pursuant to chapter 91 establishing standards to guide the department of land and natural resources and the risk assessment working group in the general design and placement of warning signs; provided that chapter 91 shall not apply to any other process or action undertaken pursuant to this part.

(g) The State and the counties shall implement an accident reporting and record keeping program whereby all known accidents in park and trail areas are documented on an accident report form, and all such accident reports are kept on a permanent basis. The risk assessment working group shall review and use accident reports kept as part of this program as part of its consultation to the board under this section.”

SECTION 3. Chapter 171, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§171- Risk assessment working group. (a) There is established a risk assessment working group that shall be administratively attached to the department. The risk assessment working group shall provide consultation to the board regarding the design and placement of warning signs, devices, or systems on improved public lands as defined in section 663- , including any comprehensive plan submitted by the State, a county, or managing entity, to the board for approval. The risk assessment working group shall consist of the following members, who shall serve without compensation:

- (1) The chairperson of the board, or designee;
- (2) The mayor of each county, or designee;
- (3) The administrators of the department’s division of forestry and wildlife and the division of state parks, or their designees;
- (4) The attorney general, or designee; and
- (5) A person appointed by the chairperson of the board knowledgeable in warning sign design.”

SECTION 4. The risk assessment working group shall submit a report of its recommendations and of the consultation provided to the board of land and natural resources under this Act, including a listing of warning signs, devices, and systems on improved and unimproved public lands subsequently approved or disapproved by the board, to the legislature no later than twenty days prior to the convening of each regular session.

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

SECTION 6. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 7. New statutory material is underscored.<sup>1</sup>

**SECTION 8.** This Act shall take effect on July 1, 2003, and shall be repealed on June 30, 2008.

(Approved May 22, 2003.)

**Note**

1. Edited pursuant to HRS §23G-16.5.