RELATING TO LANDOWNER LIABILITY.

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

SECTION 1. The legislature finds that article XII, section 7 of the Constitution of the State of Hawaii requires the State to protect and enforce the reasonable exercise of Native Hawaiian traditional and customary rights. The legislature further finds that Native Hawaiians are legally entitled to engage in the reasonable exercise of these rights and associated practices on both publicly- and privately-owned lands that are less than fully developed, regardless of whether or not they are granted express permission by landowners.

However, notwithstanding the rights of Native Hawaiian cultural practitioners, public and private landowners and property managers with liability concerns may refuse to accommodate practitioners' access to sites and resources on lands under their ownership or control. As a result, in order to exercise their constitutional right to reasonably engage in Native Hawaiian traditional and customary practices,
practitioners often risk potential conflict with landowners or
property managers and face potential citation and even arrest.

The legislature finds that although there are statutory
liability protections for private landowners who allow
recreational users to access their lands free of charge,
liability concerns regarding the scope of these protections
continue to result in the denial of access for cultural
practitioners seeking to enter private lands. Additionally, the
legislature finds that existing liability protections for
landowners who allow recreational access and use of private
lands do not extend to public lands or landowners.

Accordingly, the purpose of this Act is to provide
liability protections for public and private landowners who
expressly allow access to and use of their lands to
practitioners of Native Hawaiian traditional and customary
practices for purposes of engaging in those practices.

SECTION 2. The Hawaii Revised Statutes is amended by
adding a new chapter to title 28 to be appropriately designated
and to read as follows:
"CHAPTER

LANDOWNER LIABILITY FOR ACCESS BY NATIVE HAWAIIAN TRADITIONAL

AND CUSTOMARY PRACTITIONERS

§ -1 Purpose. The purpose of this chapter is to
encourage owners of land to make land and water areas available
for the exercise of Native Hawaiian traditional and customary
rights and associated practices by limiting landowner liability
toward persons entering thereon for those purposes.

§ -2 Definitions. As used in this chapter:

"Charge" means the admission price or fee asked in return
for invitation or permission to enter or go upon the land.

"Cultural practitioner" means any person who is on or about
the premises that the owner of land either directly or
indirectly invites or permits, without charge, entry onto the
property for the purpose of engaging in a Native Hawaiian
traditional and customary practice.

"Land" means land, roads, water, watercourses, private ways
and buildings, structures, and machinery or equipment when
attached to realty, other than land owned by the government that
are open to the public.
"Owner" means the possessor of a fee interest, a tenant, lessee, occupant, or person in control of the premises, including private individuals, corporations, trusts, and public entities.

"Native Hawaiian traditional and customary practice" means any practice that is exercised pursuant to article XII, section 7 of the Constitution of the State.

§ -3 Duty of care of owner limited.

(a) Except as specifically recognized by or provided in section -6, an owner of land owes no duty of care to keep the premises safe for entry or use by others for purposes of engaging in any Native Hawaiian traditional and customary practice, or to give any warning of a dangerous condition, use, structure, or activity on the premises to any persons entering for that purpose, or to persons entering for a purpose in response to a cultural practitioner who requires assistance, either direct or indirect, including but not limited to rescue, medical care, or other form of assistance.

(b) For purposes of this chapter, a statement or assertion that a person is seeking entry or use of the premises to engage in a Native Hawaiian traditional and customary practice shall be
sufficient to establish that the entry or use of the premises by that person is for the purpose of engaging in that practice.

§ 4 Liability of owner limited. (a) Except as specifically recognized by or provided in section -6, an owner of land who either directly or indirectly invites or permits without charge any person to use the property for purposes of engaging in a Native Hawaiian traditional and customary practice does not:

(1) Extend any assurance that the premises are safe for any purpose;

(2) Confer upon the person the legal status of an invitee or licensee to whom a duty of care is owed;

(3) Assume responsibility for, or incur liability for, any injury to person or property caused by an act of omission or commission of those persons; and

(4) Assume responsibility for, or incur liability for, any injury to person or persons who enter the premises in response to an injured cultural practitioner.

(b) An owner of land who is required or compelled to provide access or parking for access through or across the owner's property because of state or county land use, zoning, or
planning law, ordinance, rule, ruling, or order, to reach
property used for the purpose of engaging in a Native Hawaiian
cultural and customary practice shall be afforded the same
protection as to that access, including parking for the access,
as an owner of land who invites or permits any person to use
that owner's property for the purpose of engaging in a Native
Hawaiian cultural and customary practice under
subsection (a).

§ 5 Exceptions to limitations. Nothing in this chapter
limits in any way any liability that otherwise exists:

(1) For wilful or malicious failure to guard or warn
against a dangerous condition, use, or structure that
the owner knowingly creates or perpetuates and for
wilful or malicious failure to guard or warn against a
dangerous activity that the owner knowingly pursues or
perpetuates;

(2) For injury suffered in any case where the owner of
land charges the person or persons who enter or go on
the land for the use thereof, except that in the case
of land leased to the State or a political subdivision
thereof, any consideration received by the owner for
that lease shall not be deemed a charge within the
meaning of this section; or

(3) For injuries suffered by a house guest while on the
owner's premises, even though the injuries were
incurred by the house guest while engaged in a Native
Hawaiian traditional and customary practice.

§ -6 Persons using land. Nothing in this chapter shall
be construed to:

(1) Create a duty of care or ground of liability for
injury to persons or property; or

(2) Relieve any person using the land of another for the
purposes of engaging in a Native Hawaiian traditional
and customary practice from any obligation that the
person may have in the absence of this chapter to
exercise care in the use of the land or in the conduct
of activities on the land, or from the legal
consequences of failure to employ that care."
SECTION 3. This Act shall take effect upon its approval.

INTRODUCED BY: 

By Request 

JAN 16 2020
Report Title:
Office of Hawaiian Affairs (OHA) Package; Landowner Liability; Native Hawaiian Traditional and Customary Practices

Description:
Provides liability protections for public and private landowners who expressly allow access and use of their land to practitioners of Native Hawaiian traditional and customary practices.

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