

STAND. COM. REP. NO. 1131

Honolulu, Hawaii

March 24, 2011

RE: S.B. No. 1079  
S.D. 2  
H.D. 1

Honorable Calvin K.Y. Say  
Speaker, House of Representatives  
Twenty-Sixth State Legislature  
Regular Session of 2011  
State of Hawaii

Sir:

Your Committee on Agriculture, to which was referred S.B. No. 1079, S.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO LANDOWNER LIABILITY,"

begs leave to report as follows:

The purpose of this bill is to protect farmers and ranchers by:

- (1) Establishing that an owner of agricultural or range land owes no duty of care to keep the land safe for entry or use by a trespasser or to give warning of dangers to a trespasser, except under certain conditions;
- (2) Establishing a rebuttable presumption that an owner of agricultural or range land is not liable to a trespasser for injuries, loss, damage, or death occurring on the land, and specifying conditions for rebuttal of this presumption; and
- (3) Amending the offense of criminal trespass in the second degree as it relates to agricultural lands (trespass offense) by:
  - (A) Repealing existing provisions that apply the trespass offense in cases where the agricultural lands:

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- (i) Are fenced, enclosed, or secured in a manner designed to exclude intruders; or
  - (ii) Meet certain conditions relating to signage;
- (B) Expanding the trespass offense by applying it to cases where agricultural lands, at the time of entry, are fallow or have evidence of livestock-raising; and
- (C) Establishing a criminal fine of up to \$10,000 for the trespass offense.

The Hawaii Farm Bureau Federation, Hawaii Forest Industry Association, Land Use Research Foundation of Hawaii, Hawaii Cattlemen's Council, Inc., W.H. Shipman, Ltd., and Dole Food Company Hawaii supported this bill. The Department of Agriculture supported the intent of this measure. The Office of Hawaiian Affairs submitted comments. The Hawaii Association for Justice opposed this bill.

In light of concerns raised during the public hearing and questions relating to the duty of care provisions in this measure, your Committee has amended this bill by:

- (1) In lieu of the existing provisions relating to duty of care and rebuttable presumption:
- (A) Establishing a rebuttable presumption that an owner of agricultural or range land owes no duty of care toward a trespasser for injury to, property damage, or death of the trespasser that occurs on agricultural or range land or to warn the trespasser of dangerous natural conditions, activities, or uses; provided that the land meets certain conditions relating to fencing and signage.
  - (B) Prohibiting limits on the liability of an agricultural or range land owner whose acts are grossly negligent, in willful or wanton disregard of the safety of a trespasser, or who intentionally causes injury, property damage, or death to a trespasser;



- (C) Establishing that the duty of care of an owner of range land who allows recreational use of range land is the same as provided in section 520-3, Hawaii Revised Statutes, relating to landowner liability;
  - (D) Revising the definition of "agricultural land" by, among other things, making it apply to lands exceeding five acres;
  - (E) Amending the definition of "range land" to, among other things, include parameters relating to acreage; and
  - (F) Deleting the definitions of "owner" and "land";
- (2) Restoring the provisions that apply the trespass offense in cases where the agricultural lands:
    - (A) Are fenced, enclosed, or secured in a manner designed to exclude intruders; or
    - (B) Meet certain conditions relating to signage;
  - (3) Changing its effective date to July 1, 2020, to encourage further discussion; and
  - (4) Making technical, nonsubstantive amendments for style, clarity, and consistency.

As affirmed by the record of votes of the members of your Committee on Agriculture that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1079, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 1079, S.D. 2, H.D. 1, and be referred to the Committee on Judiciary.

Respectfully submitted on  
behalf of the members of the  
Committee on Agriculture,



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CLIFT TSUJI, Chair



