

NEIL ABERCROMBIE
Governor



State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512

RUSSELL S. KOKUBUN
Chairperson, Board of Agriculture

JAMES J. NAKATANI
Deputy to the Chairperson

**TESTIMONY OF RUSSELL KOKUBUN
CHAIRPERSON, BOARD OF AGRICULTURE**

BEFORE THE HOUSE COMMITTEE ON AGRICULTURE

**HOUSE BILL NO. 1488
RELATING TO LANDOWNER LIABILITY**

Chairperson Tsuji and Members of the Committee:

Thank you for the opportunity to testify on House Bill 1488 relating to landowner liability. The bill establishes a criminal trespass on agricultural lands enforcement fund, provides owners of agricultural or range land no duty of care to trespassers, establishes rebuttable presumption of no liability, permits trespasser to overcome presumption by preponderance of evidence that owner was grossly negligent or intentionally injured the trespasser and authorizes fines up to \$10,000 for the offense of criminal trespass on agricultural lands. The Department supports this bill and respectfully requests that public lands be added to the purpose of this bill. House Bill 1607, relating to range land liability, does include public lands.

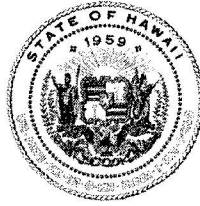
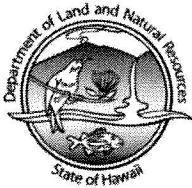
The Department manages several irrigation systems that span many miles. In most cases, these systems are in extremely remote but beautiful natural areas that hikers and nature enthusiasts tend to seek out. The Department does not possess the manpower necessary to secure the vast area that these systems cover. Incidents involving injury have happened in the past leading to millions of dollars in settlement money and our personnel continue to see people on these non-public trails and reservoir sites in spite of repeated warnings to leave. It is also important to recognize that our employees have NO enforcement power to escort trespassers off State land.

The bill proposes to establish a criminal trespass on agricultural lands enforcement fund, however it does not specify what the counties can use the fund for.



Thank you for the opportunity to testify on this bill.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
WILLIAM J. AILA, JR.
Chairperson**

**Before the House Committee on
AGRICULTURE**

**Friday, February 11, 2011
9:00 AM
State Capitol, Conference Room 312**

**In consideration of
HOUSE BILL 1488
RELATING TO LANDOWNER LIABILITY**

House Bill 1488 proposes to establish a criminal trespass on agricultural lands enforcement fund; provides that owners of agricultural land or range land have no duty of care to trespassers; and authorizes fines of up to \$10,000 for the offense of criminal trespass on agricultural lands. The Department of Land and Natural Resources (Department) supports the general intent of this bill, however, the Department is concerned that this bill may impose duties that would require a substantial amount of staff time and funding. The Department simply does not have the resources and staffing necessary to undertake the additional duties that would be required under this bill. Further, the Department does not feel the proposed Criminal Trespass on Agricultural Lands Enforcement Fund is best placed within Chapter 199, Hawaii Revised Statutes.

WILLIAM J. AILA, JR.
INTERIM CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULUKUKUI
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

WRITTEN ONLY

TESTIMONY BY KALBERT K. YOUNG
INTERIM DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE HOUSE COMMITTEE ON AGRICULTURE
ON
HOUSE BILL NO. 1488

February 11, 2011

RELATING TO LANDOWNER LIABILITY

House Bill No. 1488 establishes the Criminal Trespass on Agricultural Lands Enforcement Fund into which fines of up to \$10,000 for trespassing on agricultural lands can be deposited for use by the county in which the offense occurred.

As a matter of general policy, the Department of Budget and Finance does not support the creation of any special fund which does not meet the requirements of Section 37-52.3 of the Hawaii Revised Statutes. Special or revolving funds should: 1) reflect a clear nexus between the benefits sought and charges made upon the users or beneficiaries of the program; 2) provide an appropriate means of financing for the program or activity; and 3) demonstrate the capacity to be financially self-sustaining. In regards to House Bill No. 1488, it is difficult to determine whether there is a clear nexus between the benefits sought and the charges made upon the users or beneficiaries of the program and whether the fund will be self-sustaining.

TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION TO H.B. NO. 1488

February 11, 2011

To: Chairman Clift Tsuji and Vice Chairman Mark Hashem and Members of the House Committee on Agriculture:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in opposition to H.B. No. 1488.

HAJ does not take a position on the provision in Section 1 regarding the enforcement fund.

The provisions in Section 2 of this bill on page 1 basically provide for immunity to the owner or occupier of land to persons who are considered trespassers. By providing that an owner of agricultural or range land owes no duty of care to keep the land safe to a possible trespasser takes away a necessary element to a cause of action for negligence. Also, the subsequent provisions on page 2, lines 4 to 18 then creates a presumption which appears to contradict the fact that the landowner does not have a duty of care to keep the land safe. Basically, the result of these provisions seems to be that the landowner has absolute immunity to a trespasser with no exceptions.

HAJ has always maintained that proponents of an immunity type bill should at least provide the legislature with the data that clearly indicates the number and type of lawsuits that have been filed against private landowners by trespassers who have been hurt on their land, any resulting judgment against the landowner, and the circumstances under which the landowner was found to be negligent. We have always maintained that the legislature should have all of the facts and data before a major shift in public policy is

made. We feel that this bill is not in the public interest and would be creating bad public policy.

Generally, under traditional common law, the property owner is only required to exercise reasonable care under the circumstances. This concept is very important because there's a big difference in what is and should be expected of landowners located next to an elementary school, in contrast to landowners in sparsely populated rural agricultural and ranching areas. This is true even with respect to a trespasser, such as a child walking home through the land if it happens to be deemed to be agricultural as defined in this bill. There are situations where the presence of people on the premises is expected and anticipated and a greater degree of care must be taken. On the other hand, there are situations where it is reasonable to spend less time and effort to make property safe when visitors are not anticipated on the property. The shortcoming of measures like this one that takes an "all or nothing" approach is the failure to recognize that safety obligations do, and should continue to, vary according to the circumstances.

I also want to make it clear to the committee that there is no automatic or strict liability for injuries to trespassers. **Under current law, an obligation to keep property reasonably safe or to warn of dangers to a trespasser arises only if the landowner reasonably anticipated the presence of the trespasser on the property.** If for example, a landowner knows that children frequently come onto the property for a variety of reasons then the children's presence would be reasonably anticipated - - even though the children are technically trespassers.

Further, the law regarding trespassers was changed over 40 years ago. The Hawaii Supreme Court abolished the common law status conditions in 1969. The court

stated in that case which is still the law today that a landowner simply has a duty of care to use the standard duty of reasonable care for the safety of all persons reasonably anticipated to be on the premises regardless of the legal status of the individual. The definition section of this bill injects another definition where the landowner is obligated to use reasonable care to keep the land safe.

If certain landowners are having a specific problem with trespassers, then that problem should be examined and legislation, if appropriate, should address that problem and not apply broadly with unintended consequences. It is important to keep in mind that the word "trespasser" has a popular connotation of a person who is intentionally violating property rights with an evil or criminal intent. The legal definition however is much broader so many, if not most, "trespassers" are actually innocent people who mean no harm to the land or landowner.

This bill is a radical change in social policy and I urge this committee to do a thorough analysis to consider the need for such legislation, and if so, whether more specific and less drastic measures are more appropriate. Because of the reasons stated above, HAJ opposes this bill and requests that it not pass out of this committee.

Thank you for the opportunity to testify.

MAUI CATTLEMEN'S ASSOCIATION

*Maui Cattlemen's
Association*

PO Box 473

Kula, HI 96790

*Board of Directors
and Officers*

*Brendan
Balthazar*

Harry Cambra

Alex Franco

Greg Friel

Jimmy Gomes

William G. Jacintho

John Kim

Mike Murakami

Amber Starr

Toni Thompson

*Sustaining
ranching
communities in
Hawaii*

TESTIMONY

February 9, 2011

Submitted via email: <http://www.capitol.hawaii.gov/emailtestimony>

FROM: Maui Cattlemen's Association

TO: HOUSE OF REPRESENTATIVES COMMITTEE ON AGRICULTURE

HEARING DATE: Friday, February 11, 2011

HEARING TIME: 9:00 a.m. Conference Room 312, State Capitol

MEASURE: HB 1488

COMMITTEE ON AGRICULTURE

Rep. Clift Tsuji, Chair

Rep. Mark J. Hashem, Vice Chair

The Maui Cattlemen's Association is a non-profit organization representing small and large livestock producers in Maui County.

Thank you for introducing a bill that places no duty of care requirement on landowners toward trespassers and authorize fines for the offence of criminal trespass. **We fully support HB 1488.** This is a very good bill.

Statistics show, it takes a total of 9.5 hours per police officer to respond, investigate, and arrest a trespasser. This includes court appearance time on a simple case. In more difficult cases, more time will be needed. I don't know how many officers are involved in a trespass case, but from my experience, there is a minimum of two officers that respond to most cases. There have been times that up to four police officers respond to a trespass case. In addition, to the officers involved in a trespass case, supervisors and other staff members are involved in the procedure.

If a case goes to trial, it takes a Prosecutor 14 hours to prepare and go to court. Also involved in a court case are Court staff members, a Judge, and maybe even a Jury. As I have pointed out, it takes a lot of time and people to work on a trespass case. Not to mention, the time involved for the property owner and staff, and the work that needs to be made up, because of time lost and day to day delays that trespassers can cause by being on property. \$10,000.00 may not be enough to cover a trespass case, but at least it's better that the current \$1,000 fine. This increase could also work as a deterrent for trespassers. The way the current law is, these people just laugh at farmers and ranchers.

Here's a list of some actual actions of what Trespassers do to ranchers and their property. None of this is made up. These are actual deeds.

Trespassers:

They cut our gate chains and put their lock on our gates, yes they do this quite often.

Leave gates open.

Mixed up animals, and it takes hours and sometimes days to reorganize the herd of cattle.

Animals get out on road and causes public and police hazards, and liability for landowners.

Cut your fences.

Animals come out and create a community problem and hazards. It's so bad in areas you have to give up the pasture. We had a pasture that had this problem, and couldn't raise animals for four years. We ended up giving up the property lease.

Trespassers go in and vandalize the area

They ride motorcycles tearing up the ground, causing erosion. They also fall down too, and this creates a liability for rancher. The rougher the terrain, the more they like it.

Trespassers steal from your property. Livestock, Supplies, Equipment, Generators, Saws, Tools, etc.

Poach on your property.

Have weapons

Some are big guys

Day or night shooting, causing danger to community and residents.

Go mostly for game – deer, pigs, mostly.

Sometimes go for livestock kills.

Creates a public hazard, and hazard to the owner, workers, and other livestock in area.

We are not trained in apprehending criminals

Reversing the charges on us.

Want to charge us for holding them against their will. Many ranches are in remote areas. Due to this situation, police response is not as quick as close areas. Ranchers have to hold the trespasser there till the police arrive. Trespassers, especially armed ones get antsy, and it makes it uncomfortable for both parties.

Water destruction.

They poison the water troughs.

They steal our water pipes, we buy and install new ones, and they steal them again.

They cut into our pipes and take water for their mobile tanks.

Trespassers connect hoses from our water lines for their Pakalolo

Drugs

Trespassers do drug sale transactions on rancher's property. They jet ski into ocean bays with delivery

At times, trespassers are high on drugs, and we have to deal with them.

Hikers

They get lost, get tired, some in pain, and need help off the property.

Harass livestock by presence. Some have dogs, and lots can go wrong with that.

Pick mushroom

Food safety compliances: Issues we have had to deal with in the past.

Beef measles – miocities from human defecation on property. Carcasses have to be destroyed after producing the animal for market. What a waste and lost of income.

Neospora caninum, caused from dogs defecating on the property. Causes problems such as stillborn and early death in calves.

Dumping

They dump their trash by the truckloads, and more truckloads, including baby diapers, termite lumber, and landscape trash. They especially like it where there are turns in the roadways.

At times they dump on top of the fence, especially if the landowner asked them not to dump in the area.

They dump dead animal carcasses including pigs, dogs, cats, deer, and others. Stinky, stinky, stinky, and is a health issue.

They dump cars, and the landowner has to deal with that, and pay for the towing themselves. Many times the cars are stolen. This ties up the police time again. The landowner might locate the car owner and collect the tow fee, but there is no guarantee. The police will not deal with that issue. Personally,

we once asked a tow truck with a car ready to dump the car near our property, not to consider dumping the car, and to take it to the proper place. When we came to check on the property the next day, the car was through the fence, and through the next fence. We had a lot more work than we bargained for.

Auto Accidents

Cars into fences

The fence gets trashed for many feet. At times 30-50 feet.

The car gets towed and the fence stays open.

The car doesn't get towed, rancher closes fence

Owner tows car out breaking fence, and leaves it open. So much can go wrong.

After all these trespass issues, and more not mentioned, we should not be responsible for such people that trespass and mistreat us, our property, our animals, or our employees.

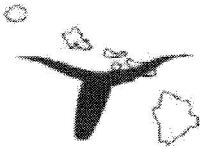
Thank you for the opportunity to provide comment on this House Bill. As you can see, this bill is very important for the Agriculture industry. **Please support House Bill 1488.**

You may reach the Maui Cattlemen's Association through the address provided above.

Sincerely,

William Jacintho, President

Amber Starr, Vice President



Hawaii Cattlemen's Council, Inc.

P O Box 437199 Kamuela HI 96743
Phone (808) 885-5599 • Fax (808) 887-1607
e-mail: HCattlemens@hawaii.rr.com

HOUSE COMMITTEE ON AGRICULTURE
Friday February 11, 2011 9:00 a.m. Room 312

HB 1488 RELATING TO LANDOWNER LIABILITY

Establishes a criminal trespass on agricultural lands enforcement fund; provides that owners of agricultural land or range land have no duty of care to trespassers; establishes rebuttable presumption of no liability; permits trespasser to overcome presumption by preponderance of evidence that owner was grossly negligent or intentionally injured the trespasser; authorized fines of up to \$10,000 for the offense of criminal trespass on agricultural lands.

Chairman Tsuji, Vice Chair Hashem and Members of the Committee:

My name is Alan Gottlieb, and I am a rancher and the Government Affairs Chair for the Hawaii Cattlemen's Council. The Hawaii Cattlemen's Council, Inc. (HCC) is the Statewide umbrella organization comprised of the five county level Cattlemen's Associations. Our 130+ member ranchers represent over 60,000 head of beef cows; more than 75% of all the beef cows in the State. Ranchers are the stewards of approximately 25% of the State's total land mass.

The Hawaii Cattlemen's Council **strongly supports** HB 1488, as it provides for improved **enforcement**.

There are many trespass laws already on our books and new provisions being proposed in a number of bills at this legislature this session. However, enforcement of trespass laws is lacking and is the most serious problem we have when it comes to trespass. This is not fault of the county police and prosecutors who have limited resources, leaving trespass crimes lower on their list of priorities. With a current fine of only \$1,000 and the knowledge by repeat, malicious trespass offenders that Police will likely not respond to our calls, and even if they do, that they likely won't be prosecuted or convicted, they laugh at our laws and continue to trespass and cause serious harm to our property and our ability to stay in business. The single strongest thing you can do to send a message to trespassers that it is not O.K. for them to damage our property is to increase the fine and to give the police and prosecutors the resources (by giving any fines collected back to the counties for enforcement of trespassing) to enforce the law, as proposed in this bill.

We realize DLNR has some concerns placing this fund under Chapter 199, as proposed by this bill, and we are working with them and others to create a better mechanism for getting the fines collected from trespassers back to the respective counties for enforcement of trespass crimes. We urge you to pass this bill out and allow us to continue to work with DLNR to make suggestions to alleviate DLNR's concerns by the time this bill is heard at House JUD.

Trespassing crimes are very serious to cattle ranchers and other agricultural commodities across the state. Trespassers cause damage to property, increase liability to operators, and pose a serious threat to our food safety issues. This past year, there have been several incidents where trespassing vandals destroyed papaya farms on Oahu and the Big Island, costing farmers tens of thousands of dollars.

Property damage, to livestock, damaged fences, stealing of agriculture products can be irreversible for the landowner or operator. Thousands of dollars are spent per year in repairing damages created by trespassers and it affects the economic survival for all ag commodities. We are often easy targets

because of our remote locations, easy access and limited surveillance. We have a responsibility to be good stewards of our land and trespassers make it difficult to continue that without proper consequences.

Liability is also a tremendous burden for landowners and operators. This bill will limit that liability when trespassers try to claim injury sustained on private property. Landowners cannot have a legal duty to protect a person who is uninvited onto the property and gets injured because of any natural risks or hazards that are inherent characteristics of agricultural land. This bill would reduce landowner/land operator liability.

Food safety and food security is another issue. If agriculture and the food production system is constantly the target for disruption, destruction or altering of the production of food, it will pose a serious problem for the food safety and security of our entire state. In times when we are trying to increase local food production state wide, agricultural landowners need to carry less liability and need to be encouraged to have profitable ag enterprises.

In closing, trespassers can ultimately create intense damage to our agricultural economy and this needs to be prevented by stricter laws and stiffer fines. We need to increase advocacy for farmers and ranchers who want to continue to produce food in an efficient, profitable, and responsible manner. Government needs to protect the intrinsic value of ranchers and farmers for the present and the future, by making greater efforts to limit liability of all agricultural landowners and HB 1488 will create that.

Thank you for giving me the opportunity to testify in favor of this very important issue.



Food Company Hawaii

1116 Whitmore Avenue • Wahiawa, Hawaii 96786

HOUSE COMMITTEE ON AGRICULTURE
Friday February 11, 2011 9:00 a.m. Room 312

HB 1488 RELATING TO LANDOWNER LIABILITY

Establishes a criminal trespass on agricultural lands enforcement fund; provides that owners of agricultural land or range land have no duty of care to trespassers; establishes rebuttable presumption of no liability; permits trespasser to overcome presumption by preponderance of evidence that owner was grossly negligent or for the offense of criminal trespass on agricultural lands. Intentionally injured the trespasser; authorized fines of up to \$10,000

Chairman Tsuji, Vice Chair Hashem and Members of the Committee:

My name is Daniel Nellis and I am the Operations Director for Dole Food Company Hawaii. Dole grows pineapple, coffee, and cacao on our Oahu farm and also leases land to independent growers producing a variety of diversified crops and livestock.

Dole Food Company Hawaii **strongly supports** HB 1488 and **suggests that language be added to allow trespassers to be arrested without previously receiving a “trespass warning”**. Elimination of the current warning requirements coupled with the authorization of fines up to \$10,000 would serve as a strong deterrent to trespass on agricultural lands.

Dole and our tenant farmers have experienced excessive costs related to trespass damage and removal of trespassers (approximately \$100,000 for Dole in 2010). The reduction of liability for landowners and agricultural operators intended by this bill can reduce the exposure to costs trespassers cause to farmers and ranchers.

Any legislative effort to prevent trespassing and the costs it creates to our agriculture industry are much appreciated. Stricter trespass laws and supported enforcement should be encouraged so that victims of trespass are better protected. Safe, secure farms in Hawaii can produce safe, affordable food for the people of Hawaii.

Thank you for the opportunity to provide testimony in favor of this important legislation.

hashem2 - Dorothy

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 09, 2011 3:50 PM
To: AGRtestimony
Cc: lmochida@whshipman.com
Subject: Testimony for HB1488 on 2/11/2011 9:00:00 AM
Attachments: HB 1488 Liability.doc

Testimony for AGR 2/11/2011 9:00:00 AM HB1488

Conference room: 312
Testifier position: support
Testifier will be present: No
Submitted by: Loren Mochida
Organization: Individual
Address: 16-523 Keaau-Pahoa Road HI
Phone: 808 9669325
E-mail: lmochida@whshipman.com
Submitted on: 2/9/2011

Comments:

hashem2 - Dorothy

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 10, 2011 6:33 AM
To: AGRtestimony
Cc: jimmygomes@hawaii.rr.com
Subject: Testimony for HB1488 on 2/11/2011 9:00:00 AM

Follow Up Flag: Follow up
Flag Status: Completed

Testimony for AGR 2/11/2011 9:00:00 AM HB1488

Conference room: 312
Testifier position: support
Testifier will be present: No
Submitted by: James A, Gomes
Organization: Individual
Address: HC1 Box 901 Kula, Hi. 96790
Phone: 808 268-8062
E-mail: jimmygomes@hawaii.rr.com
Submitted on: 2/10/2011

Comments:

hashem1 - Angleica

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 10, 2011 8:57 AM
To: AGRtestimony
Cc: sootbr@msn.com
Subject: Testimony for HB1488 on 2/11/2011 9:00:00 AM

Testimony for AGR 2/11/2011 9:00:00 AM HB1488

Conference room: 312
Testifier position: support
Testifier will be present: No
Submitted by: Carl H. Bredhoff Jr.
Organization: Individual
Address: 3300 Wailea Alanui 30 B Kihei, HI 96753
Phone: 808-879-8462
E-mail: sootbr@msn.com
Submitted on: 2/10/2011

Comments:

Farmers and rancher in Hawai'i are continually faced with individuals trespassing on their property. The obvious trespass is hunting which finds hunters over all kinds of terrain on ranch that is a times treacherous. In 70's there were the hippies who were in every livable spot on ranches. On Kaupo Ranch they climbed into the water tanks to bathe. There are the "magic mushroom" pickers, the fruit and flower gatherers the hikers the motorcycle riders and the paka lolo growers and now the thieves due to the meth epidemic. A rancher and farmer cannot police large acreages on a daily basis and they should not be liable for injuries everywhere on their property. It is only getting worse as thee islands population increases.

Please support HB1488.

hashem2 - Dorothy

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 10, 2011 3:16 PM
To: AGRtestimony
Cc: fujitanid002@hawaii.rr.com
Subject: Testimony for HB1488 on 2/11/2011 9:00:00 AM

Testimony for AGR 2/11/2011 9:00:00 AM HB1488

Conference room: 312
Testifier position: support
Testifier will be present: No
Submitted by: Donald S. Fujitani
Organization: Individual
Address: 585 W. Kuiaha Rd. Haiku, HI 96708
Phone: 808 575 9932
E-mail: fujitanid002@hawaii.rr.com
Submitted on: 2/10/2011

Comments:

Agriculture land owners should not be made responsible for acts of vandals, thieves, and squatters who have no respect for private property owners. They are no different than copper thieves on Oahu and elsewhere that cost the state and private owners many thousands of dollars for repair and replacement.