



**Hawaii Farm Bureau**  
F E D E R A T I O N

**LATE TESTIMONY**

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**House Committee on Agriculture**

February 11, 2011

9 am

Room 312

## **HB 1488 RELATING TO LANDOWNER LIABILITY**

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

Hawaii Farm Bureau Federation, on behalf of our commercial farm and ranch families and organizations across the State, **strongly supports HB 1488.**

**Farmers and ranchers need your help.**

**This is the problem:**

- **TRESPASSERS ARE RUNNING AMOK**

Farms and ranches across the State are being used without permission from owners for hiking, hunting, dirt biking, and worse---illegal activities. Our hard-earned crops are stolen, our livestock endangered by cut fences, and we are used as a rubbish dump, a place to abuse alcohol and drugs and to commit other crimes. Furthermore, some trespassers are dangerous and have threatened to harm farmers when asked to leave.

- **WHO SHOULD BE RESPONSIBLE WHEN A TRESPASSER HURTS HIMSELF?**

As if things aren't bad enough, there are individuals who trespass, get hurt, and then threaten to sue us for their injuries. We cannot make our properties safe for trespassers. We cannot provide 24-hour security. We cannot fence and post with signs every slippery rock, puddle, cliff, frightened bull, or protective mother cow. We shouldn't have to lose everything we work so hard to create, in lawsuits because of people who have no respect for others' property, hurt themselves violating the law, and then take no personal responsibility for what has happened to them. There is certainly no benefit provided to the farmer or rancher from these trespassers or their activities and **there should be no duty of care owed to them.**

- **NO CONSEQUENCES SINCE NO ENFORCEMENT**

County budgetary constraints limit the availability of police officers and other resources to address trespass, theft, and vandalism. Trespassers know this and often return day after day (or night after night) with impunity.

**This bill addresses the problem. It would:**

1. clarify that farmers and ranchers have **no duty of care** to keep their lands safe for trespassers or to warn them of potentially dangerous conditions on the land (unless of course, they are grossly negligent or intentionally injure the trespasser).
2. clarify that if a person can see **evidence of crops**, that person should know that this **land is not open** to him to do what he wants, even if it is not fenced off and there are no signs telling him that the land isn't his. Homeowners are certainly not required to fence their properties and post signs to keep trespassers out; a farmer or rancher, usually with larger acreage and therefore more significant fencing costs, should not have to do so either.
3. allow **significant fines** for agricultural trespass.
4. establish a **fund** with the money that is received from fines to be used by the county in which the agricultural trespass occurred.

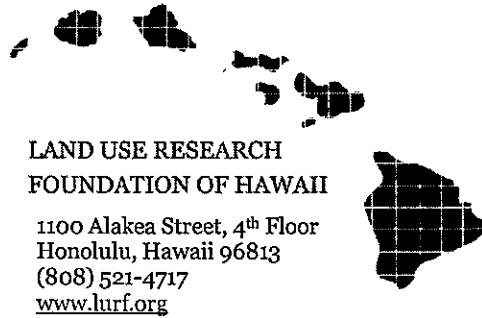
In order to equally protect ranchers, and farmers with fallow lands, we respectfully request that you add to Section 708-814 (1)(c) on line 12, page 6, clarifying language, since we believe that the original intent of this section was to include these scenarios:

*at the time of entry, are fallow, or have a visible presence or evidence of livestock-raising, such as cattle, horses, water troughs, shelters, paddocks, or of a crop:*

**This bill will protect farmers from owing a duty of care to those who do not deserve it.** It will also clarify that areas used for crops, but that happen to be fallow at the time of trespass, as well as ranching lands, are protected by this law.

**Thank you very much for your help to protect the viability of the farmers and ranchers across Hawaii who would like to continue to supply food to our residents and visitors, and help Hawaii move toward food self-sufficiency.**

**We would appreciate the opportunity to work with you on necessary amendments so that these long-standing problems will finally be addressed.**



LAND USE RESEARCH  
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February 11, 2011

Representative Clift Tsuji, Chair and Representative Mark Hashem, Vice Chair  
Committee on Agriculture

**Support of HB 1488, Relating to Landowner Liability. (Enforcement Fund and No duty of care for owner of agricultural land or range land.)**

**Friday, February 11, 2011 at 9:00 a.m. in CR 312**

My name is Dave Arakawa, and I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources and public health and safety.

We appreciate the opportunity to provide our testimony **in support of HB 1488, and offer comments.**

**HB 1488.** This bill creates a criminal trespass on agricultural lands enforcement fund generated by funds for violation of 708-814 (2), Hawaii Revised Statutes, (HRS). This bill also strengthens the trespass provisions of Chapter 663, HRS by adding a section entitled Trespass; no duty of care; liability of owner; rebuttable presumption applicable to owners of agricultural land or range lands. This new section would allow an owner of agricultural or range lands to have no duty of care to keep the land safe for entry or use by a trespasser, nor give any warning of dangerous condition, use, structure or activity. This section would also create a presumption that the owner of agricultural land or range land is not liable to a trespasser for injury, loss, damage or death occurring on premise, that could be rebutted by a preponderance of evidence that the owner (1) committed an act or omission of gross negligence; or (2) intentionally injured the trespasser. HB 1488 also amends Section 708-14, HRS removing requirements of having area fenced, enclosed or secured; and of having signs displayed, and adds fines of up to \$10,000 for criminal trespass in the second degree, funds collected to be deposited into the criminal trespass on agricultural lands enforcement fund.

**LURF's Position.** This bill protects owners and occupiers of private land from liability if a person who commits the offense of criminal trespass is injured while coming onto the property, unless the injury is caused by the owner's or occupier's gross negligence or willful or wanton conduct.

We believe that this bill represents a fair, equitable and reasonable balance between the landowner's duties, rights and responsibilities, and the rights of a trespasser if an injury or death results based on grossly negligent or intentional conduct by the landowner.

The changes proposed in Section 708-814(c), HRS and the amendment to said statutory requirements that delete provisions regarding fencing requirements and signage is also supported by LURF, as many owners of large agricultural parcels are unable to provide signage at every entry point due to high costs and accessibility issues. LURF also supports the increase in fees of up to \$10,000 for violations of criminal trespass in the second degree, of which funds would be deposited into the criminal trespass on agricultural lands enforcement fund.

Owners of unimproved and unused lands, including farmers and ranchers, have continually experienced problems with trespass, yet have been defenseless against claims by trespassers for incidents and injuries suffered on their agricultural lands, and have, in fact, had to protect trespassers from loss and injury despite their illegal entry.

LURF is in **support of HB 1488**, and we respectfully urge your favorable consideration. The opportunity to present our testimony regarding this matter is greatly appreciated.