

NEIL ABERCROMBIE
Governor



RUSSELL S. KOKUBUN
Chairperson, Board of Agriculture

JAMES J. NAKATANI
Deputy to the Chairperson

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

TESTIMONY OF RUSSELL S. KOKUBUN
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE HOUSE COMMITTEE ON AGRICULTURE
AND WATER, LAND, AND OCEAN RESOURCES

WEDNESDAY, FEBRUARY 2, 2011
8:00 A.M.
ROOM 312

HOUSE BILL NO. 226
RELATING TO LANDOWNER LIABILITY

Chairperson Tsuji and Members of the Committee:

Thank you for the opportunity to testify on House Bill No. 226, Relating to Landowner Liability. The purpose of this bill is to establish that an owner or possessor of private land that is closed to the public owes no duty of care to a person who commits the offense of criminal trespass on the owner's or occupier's land, except where death or injury to the trespasser may result from the owner's or occupier's gross negligence or willful conduct. The Department strongly supports this bill and respectfully requests that public lands be added to the purpose of this bill.

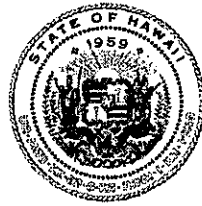
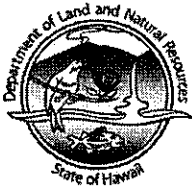
The Department manages several irrigation systems that span many miles. In most cases, these systems are in extremely remote but beautiful natural areas that hikers and nature enthusiasts tend to seek out. The Department does not possess the manpower necessary to secure the vast area that these systems cover. The Department has spent thousands of dollars on "No Trespassing" signs; however, these warnings continue to go unheeded. 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 of State land.



PAGE 2

Thank you for your consideration of House Bill No. 1339.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

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
KAIHOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

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

**Before the House Committees on
WATER, LAND, & OCEAN RESOURCES
AND
AGRICULTURE**

**Wednesday February 2, 2011
8:00 AM**

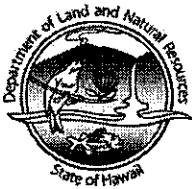
State Capitol, House Conference Room 312

**In consideration of
HOUSE BILL 226
RELATING TO LANDOWNER LIABILITY**

House Bill 226 establishes that an owner or possessor of private land that is closed to the public owes no duty of care to a person who commits the offense of criminal trespass on the owner's or occupier's land, except where death or injury to the trespasser may result from that owner's or occupier's gross negligence or willful or wanton acts that cause the injury; clarifies that provisions related to criminal trespass in the second degree apply to agricultural lands that are fallow.

The Department of Land and Natural Resources (Department) supports this measure as it will provide a level of protection to the Department from liabilities resulting from person(s) who commit criminal trespass on public land that the Department has closed to the public to protect health and safety or to prevent damage to natural resources.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

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

GUY H. KAULUKUKUI
FIRST DEPUTY

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FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAIHOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Department of Land and Natural Resources
Testimony Transmittal Cover Sheet

Date Submitted: January 31, 2011

Testifier's Name/Title: Paul Conry, Forestry and Wildlife Division Administrator

Committee Name: HOUSE COMMITTEE ON AGRICULTURE
AND WATER, LAND & OCEAN RESOURCES (AGR-WLO)

Day and Date: Wednesday, February 02, 2011
Time/Location: 8:00 AM, Conference Room 312

Measure Number: HB 226 – RELATING TO LANDOWNER LIABILITY.

Requested Copies: 5 (including original) to Room 424 in the State Capitol



TESTIMONY

RE: HB226 LANDOWNER LIABILITY

Chair Chang, Chair Tsuji and Members of the Committee:

Maui County Farm Bureau on behalf of our commercial farm and ranch families and organizations is in strong support of HB226, limiting landowner liability for injuries suffered during the act of trespass.

Respect for private property has declined over the years. Our farms and ranches regularly face trespassers whether to go to a recreational spot, hike, hunt or use our lands to dispose of stolen property. Our lands are not meant for public access. We have insurance policies, however, a large claim can result in rate hikes that make it unaffordable for the future. Some have said, what examples do you have. The first may be too late. This is a case where prevention is critical to help with long term agricultural viability.

Similar measures have been passed for State lands. This provides the same protection for private lands.

We respectfully request your assistance in moving this measure forward. If there are any questions, please contact Warren Watanabe at 2819718.

Ulupalakua Ranch, Inc.
P.O. Box 901, Kula, Hawaii 96790-9302
Phone: (808) 878-1202
Fax: (808) 878-2178

TESTIMONY

January 31, 2011

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

FROM: Ulupalakua Ranch, Inc.

TO: HOUSE COMMITTEE ON AGRICULTURE
Rep. Clift Tsuji, Chair
Rep. Mark J. Hashem, Vice Chair

HOUSE COMMITTEE ON WATER, LAND, & OCEAN RES.
Rep. Jerry L. Chang, Chair
Rep. Sharon E. Har, Vice Chair

HEARING DATE: Wednesday, February 2, 2011
HEARING TIME: 8:00am, Conference Room 312
MEASURE #: HB 226 RELATING TO LAND OWNER LIABILITY

Ulupalakua Ranch supports **HB 226 RELATING TO LAND OWNER LIABILITY**.

We strongly feel that an owner or possessor of private land that is closed to the public owes no duty of care to a person who commits the offence of criminal trespass on the owner's or occupier's land.

Persons trespassing on private ranchlands cause due hardship and economic losses to the operators. Trespassers unknowingly and knowingly cause miss-mothering of calves – leading to death or malnutrition in the calf - directly affecting the economic production of the operation. Trespassers unknowingly and knowingly leave gates open – causing ranchers time and labor to reorganize mixed herds. Trespassers unknowingly and knowingly cause wear and tear on fences when climbing over them – causing ranchers infrastructure and labor expenses. Furthermore, many ranch lands, in their completely natural and native state, can have inherently dangerous areas that are not intended for human trespass.

Trespass is a never-ending battle for ranchers and farmers, even with fences and signs in place. It would be unfair and uneconomic to further encumber there operations by

making them liable for uninvited and unwanted trespass by persons whom have no concern for the rights of the farmers and ranchers.

Please support House Bill 226 – if for nothing more than it makes common sense.

Thank you for the opportunity to provide comment on this House Bill.

Sincerely,

Sumner Erdman, President



KAMEHAMEHA SCHOOLS

TESTIMONY TO THE HOUSE COMMITTEE ON AGRICULTURE AND
HOUSE COMMITTEE ON WATER, LAND AND OCEAN RESOURCES

Hearing Date: Wednesday, February 2, 2011
8:00 a.m., Conference Room 312

Dear Chair Chang and Tsuji, Vice Chair Har and Hashem and Committee Members:

RE: Testimony in Support of House Bill No. 226 - Relating to Landowner Liability

I am Kapu C. Smith, Senior Land Asset Manager for Kamehameha Schools' Kawaiiloa Plantation in Waiialua, Oahu. I am here to testify in support of HB 226. As with many other landowners, we face daily trespass by those who ignore our private property signs, cut our gates, steal from our tenants, illegally hunt, dump construction and household waste, damage our water systems by riding dirt bikes along the berms or driving four wheel vehicles and ATV's in our ditches, and intimidate our farmers and workers because they are armed or threaten personal retaliation or property damage. Despite this, the current law does the following:

- Requires a duty of care to these trespassers by the landowner.
- Considers a trespasser on "unimproved or apparently unused land" to have a license privilege which requires the landowner to **personally notice the trespasser before he is considered a trespasser** on unused or apparently unused land.

HB 226 would limit landowner liability while HB 227 would eliminate the need for personal notice to the trespasser. We believe this would be a first step in the process to stop ongoing trespass on both farmed and vacant agricultural lands.

Thank you for the opportunity to testify in support of HB 226 and please consider either hearing HB 227 or amending HB 226 to include HB 227.

567 SOUTH KING STREET, HONOLULU, HAWAII 96813 TELEPHONE (808) 523-6200 FAX (808) 523-6374

Founded and Endowed by the Legacy of Princess Bernice Pauahi Bishop

**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII
ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION TO H.B. NO. 226**

February 2, 2011

To: Chairmen Cliff Tsuji and Jerry Chang and members of the House Committees on Agriculture and on Water, Land & Ocean Resources:

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. 226

The provisions in Section 1 of this bill on page 1 provide for immunity to the owner or occupier of land to persons who are in violation of a wide variety of activities under chapters 705, 707, 708, 710 and 711 of the Hawaii Penal Code. These provisions include land based offenses, such as trespass, but also include activities such as solicitation, false advertising, bribery, computer fraud, credit card violations, unauthorized use of cable TV services, refusing to aid a police officer, perjury, jury tampering and numerous other activities that have no apparent connection with landowner liability. Those activities that are connected with land include children picking a mango or flower along the sidewalk or school children taking a recognized shortcut through former sugar or pineapple land that now borders a school. This bill is extremely vague and overly broad. In addition, it mixes criminal violations with civil liability in such a sweeping manner that disregards the basic differences between the functions of criminal and civil laws.

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 areas. This is true even with respect to a trespasser, such as a child walking home through the parking lot of an adjoining condominium or shopping center (and is technically violating the trespassing law). There are situations where the presence of people on the premises is expected 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.

HAI would also like to point out that that a trespass could be either a civil trespass or a criminal trespass and this provision appears to mix the two concepts. It appears that the injured person must be convicted of a crime before the protections afforded the landowner is effective. The injured party in any case should not be adversely affected by this law so that, depending upon the facts of a particular case, that person would maintain his or her rights to file a claim for any injury against any party deemed to be negligent.

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 lives next to an elementary school and knows that children frequently come onto the property to retrieve balls, Frisbees and other toys that occasionally land in the yard during recess, 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.

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. In fact, simple trespass under §708-815, one of the sections covered by this bill, is only a violation (like parking with an expired meter) subject to a fine. It is not considered a crime under the penal code.

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.

har3 - Megan

From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 31, 2011 11:42 PM
To: WLOtestimony
Cc: jacinthow001@hawaii.rr.com
Subject: Testimony for HB226 on 2/2/2011 8:00:00 AM

Testimony for WLO/AGR 2/2/2011 8:00:00 AM HB226

Conference room: 312
Testifier position: support
Testifier will be present: No
Submitted by: Maui Cattlemen's Association
Organization:
Address:
Phone: (808)878-2660
E-mail: jacinthow001@hawaii.rr.com
Submitted on: 1/31/2011

Comments:

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

We SUPPORT HB 226 RELATING TO LAND OWNER LIABILITY.

We strongly feel that an owner or possessor of private land that is closed to the public owes no duty of care to a person who commits the offence of criminal trespass on the owner's or occupier's land.

These people are uninvited, and at times their presence on the private property interferes with the day-to-day operations. In addition, they put us, or our employees in harms way, because livestock do not cooperate when they feel their environment is threatened by the presence of strangers. This makes our jobs more difficult and dangerous.

The natural lay out of the land can also be uncontrollably dangerous, and it's best if people not enter private property. To many times they do, for a variety of reasons, and we have to spend the time escorting them out to safety. In some areas, it's endless.

Thank you for the opportunity to provide comment on this House Bill.
You may reach Maui Cattlemen's Association through the address provided above.

Sincerely,

William Jacintho, President

Amber Starr, Vice President

har3 - Megan

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 01, 2011 2:56 PM
To: WLOtestimony
Cc: gottlieb@hawaii.rr.com
Subject: Testimony for HB226 on 2/2/2011 8:00:00 AM

Testimony for WLO/AGR 2/2/2011 8:00:00 AM HB226

Conference room: 312
Testifier position: support
Testifier will be present: No
Submitted by: Alan Gottlieb
Organization: Hawaii Cattlemen's Council
Address:
Phone:
E-mail: gottlieb@hawaii.rr.com
Submitted on: 2/1/2011

Comments:

har3 - Megan

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 01, 2011 9:15 AM
To: WLOtestimony
Cc: rodeomaui@aol.com
Subject: Testimony for HB226 on 2/2/2011 8:00:00 AM
Attachments: Sharon Ann Freitas.docx

Testimony for WLO/AGR 2/2/2011 8:00:00 AM HB226

Conference room: 312
Testifier position: support
Testifier will be present: No
Submitted by: Sharon Ann Freitas
Organization: Individual
Address: 18 Kaluhea Pl Haiku, HI
Phone:
E-mail: rodeomaui@aol.com
Submitted on: 2/1/2011

Comments:
I support HB 226

har3 - Megan

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 01, 2011 1:03 PM
To: WLOtestimony
Cc: ronmaui03@gmail.com
Subject: Testimony for HB226 on 2/2/2011 8:00:00 AM

Testimony for WLO/AGR 2/2/2011 8:00:00 AM HB226

Conference room: 312
Testifier position: support
Testifier will be present: No
Submitted by: Ron Montgomery
Organization: Individual
Address: 68 Ka Drive kula, HI
Phone: 808 2839079
E-mail: ronmaui03@gmail.com
Submitted on: 2/1/2011

Comments:

har3 - Megan

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 01, 2011 9:09 AM
To: WLOtestimony
Cc: bobbiepatnode@fastmail.fm
Subject: Testimony for HB226 on 2/2/2011 8:00:00 AM

Testimony for WLO/AGR 2/2/2011 8:00:00 AM HB226

Conference room: 312
Testifier position: support
Testifier will be present: No
Submitted by: Bobbie Patnode
Organization: Individual
Address: 16547 Haleakala Hwy Kula, HI
Phone: 876-0140
E-mail: bobbiepatnode@fastmail.fm
Submitted on: 2/1/2011

Comments:

har3 - Megan

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 01, 2011 7:22 AM
To: WLOtestimony
Cc: jimmygomes@hawaii.rr.com
Subject: Testimony for HB226 on 2/2/2011 8:00:00 AM.

Testimony for WLO/AGR 2/2/2011 8:00:00 AM HB226

Conference room: 312
Testifier position: support
Testifier will be present: No
Submitted by: James Gomes
Organization: Individual
Address: HC1 Box 901 Kula, Hi. 96790
Phone: 808-268-8062
E-mail: jimmygomes@hawaii.rr.com
Submitted on: 2/1/2011

Comments:

har3 - Megan

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 01, 2011 7:02 AM
To: WLOtestimony
Cc: realtnt@aol.com
Subject: Testimony for HB226 on 2/2/2011 8:00:00 AM

Testimony for WLO/AGR 2/2/2011 8:00:00 AM HB226

Conference room: 312
Testifier position: support
Testifier will be present: No
Submitted by: Anthony Cadiz
Organization: Individual
Address: 501 Calasa Road Kula, HI 96753
Phone: 561-251-5375/808-298-0992
E-mail: realtnt@aol.com
Submitted on: 2/1/2011

Comments:

As a private owner of 20 acres of agricultural land just off of Calasa Road in Kula I have personally encountered unauthorized trespassers on a number of occasions who were either hunting or just nosy in that they were walking my property blatantly ignoring the no trespass private property posted signs. Presumably many, many more have trespassed without my catching them in the act. The point being that they are trespassers and no duty of care should be afforded to trespassers.