

LINDA LINGLE  
Governor

MIKE MCCARTNEY  
President and  
Chief Executive Officer

# Hawai'i Tourism Authority

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Testimony of  
**Mike McCartney**  
President and Chief Executive Officer  
Hawai'i Tourism Authority  
on  
**H.B. 548**  
**Relating to Trespass**

House Committee on Tourism  
Monday, January 31, 2011  
9:10 a.m.  
Conference Room 312

The Hawai'i Tourism Authority (HTA) strongly supports H.B. 548 which holds visitor guide websites and visitor guide publications liable for the injury or death of individuals who are enticed to trespass on private property as a result of representations in a website or publication describing attractions or activities.

Visitors frequently rely on guide websites or guide publications that encourages or invites a person to commit trespass on or through privately owned land and visitors are often injured or die as a result of trespass on private land to an attraction or activity described in the website or publication.

A guidebook, describes access Kipu Falls on the island of Kauai this way:

"To get to the falls, walk the trail on your left just before the bridge on Kipu Road (see map). The land was formerly used for growing sugar. Although the land company has posted NO TRESPASSING signs on their land, it hasn't stopped locals – who have visited this waterfall for generations – from walking to it. In fact, according to the local newspaper, community activists contend that access has occurred for so long, a "prescriptive easement" exists. Regardless, we'll just have to tell you where it is and leave the rest to you."

It does not adequately describe the inherent dangers associated with the attraction, where numerous people have been injured and where a few have died, resulting in the landowner being sued.

H.B. 548 amends the definition of "enter or remain unlawfully" as it is used in provisions of Chapter 708, HRS, relating to criminal trespass. It deletes the provision that says that a person entering or remaining upon "*unimproved or apparently unused land*" does so with "*license and privilege*" ***unless trespass notice is personally communicated to the person by the owner or an authorized person or by notice posed in a conspicuous manner.*** The definition is from the common law that was part of the Model Penal Code enacted in 1972 as part of the Hawaii Penal Code, the rationale for which was to permit hunting and fishing on private lands out of "...concern for an individual's right to secure his own material subsistence. ... Today, hunting is

generally viewed as analogous to other forms of outdoor recreation, conducted for pure enjoyment rather than sustenance.”

It also amends section 708-814 to make knowingly “entering and remaining unlawfully” on unimproved or unused land that is fenced or enclosed or with signs the offense of criminal trespass in the second degree.

We urge you favorable consideration of this measure.

January 29, 2011

The Honorable Chair Tom Brower  
Vice Chair James Tokioka  
Committee on Tourism

Re: Support for HB 548, Relating to Trespass

Messrs. Chair and Vice Chair,

Thank you for this opportunity to submit testimony in support of House Bill 548, Relating to Trespass.

As a member of Kauai's hospitality industry, I am all too familiar with visitor injury and death caused by those seeking 'off the beaten path' adventure. Most of us in the visitor industry have been personally affected by, or involved with a family's struggle to deal with the loss of a loved one on what started out to be the trip of a lifetime. With the advent of underground-type guidebooks and the explosion of adventure-oriented websites and blogs we have seen an increase in visitor access to private property and subsequently, dangerous conditions. Although private landowners may take measures to discourage access, print and electronic media recommendations unreasonably validate a visitor's decision to unlawfully trespass. This places the private landowner in a difficult and legally precarious situation. The guidebooks, blogs and websites profit from such recommendations, but bear none of the liability exposure and responsibility.

Each year the lure of adventure claims the lives of well-intentioned but unwary and ill-informed visitors, and each year the guidebooks and websites 'up the ante' by publishing more dangerous recommendations in the name of adventure.

Respectfully Submitted,

Todd M. Oldham  
General Manager  
22°North Restaurant at Kilohana

# The Club at Kukui'ula<sup>SM</sup>

January 29, 2011

Honorable Chair Brower  
Vice Chair Tokioka  
Tourism Committee  
Hawaii State Capitol  
Honolulu, HI 96813

RE: HB 548 Relating to Trespass

Dear Chair Brower and Vice Chair Tokioka and Members of the Committee:

I am writing to you in support of HB 548 Relating to Trespass. Guidebooks and websites have been irresponsible in printing information, which encourages trespassing on private property on each of our island counties. Visitors have used this information and assumed that it is acceptable to trespass because the information is in print. Some of these sites are not safe to access without a guide or proper supervision. Visitors have been injured, some fatally while accessing these otherwise private property sites.

As a resident born and raised in Hawaii and having worked in the Hospitality Industry in Hawaii now for 20 years, I urge you to pass this legislation and make it the publishers of these guidebooks and websites to be accountable for exposing visitors to risks without proper notice of inherent dangers and trespassing on private property.

Malama Pono,



Kurt Matsumoto  
General Manager  
(808) 651-4527

**From:** George Thompson [mailto:george@fathomfive.com]  
**Sent:** Saturday, January 29, 2011 5:35 PM  
**To:** TOUTestimony  
**Subject:** testing

Concerning HB 548 and HB 552

George D Thompson  
President, Fathom Five Divers Inc.  
3450 Poipu road  
Koloa Hawaii 96756

Allow me to introduce myself. My name is George Thompson and I am the owner of Fathom Five Divers on Kauai. We are the oldest running diving center on the island and have been in business for over 25 years.

I am writing you today about my concern for a series of bills that have been introduced to the State of Hawaii House of Representatives and seem to target publishers of tourist information. In the bills, the liability is being removed from private land owners and redirected to publishers and authors of publications that entice tourists to trespass on private land. From what I can see, the bill is trying to discourage irresponsible publishing and at the same time protect private landowners from lawsuits in the event that a visitor is injured or killed because they were directed to trespass by a website or a visitor publication. Although I understand the concept and reason for this bill, I have grave concerns over the consequences on unintended individuals and businesses due to the wording, or more directly the lack of a wording protecting persons like myself that in the past have unknowingly directed visitors to locations that were located on private property.

The bill if, passed as written, would give individuals the ability to sue publishers for encouraging them to trespass even if the person had never used the publication. For instance if a visitor were injured while visiting a location, it would be a simple matter for that visitor after the fact to research and find numerous publications that had directions to the falls and under the current wording sue every author that had ever published any directions to that spot even though that publication had not been used. I myself have gone to the Lihue Public Library and retrieved copies of books that were written in the 1990's offering directions and suggestions to different locations that are now on private land.

It seem as if this bill is not about protecting the rights of a private landowner but punishing any publisher, person or web site that inadvertently directs a visitor to a location that may be on private land. This most likely will result in a both a massive decrease of published material regarding Hawaii decreasing the exposure that we receive and a massive increase of litigation placing even more strain on an already struggling economic situation. At this point in time it appears to me that this bill could potentially inadvertently harm many industries by decreasing the exposure that we need to bring visitors to our islands.

I understand the need for responsible journalism but the bills as written are extremely flawed and will not only open businesses such as myself to lawsuits but would ultimately cause a flood of litigation to occur even though there really was no intention or desire to direct a visitor to trespass.

I am imploring you to reconsider the bill as written and to either rewrite this law or defer it until it can be better defined and protect persons and businesses such as myself, who through no ill intention, would be open to massive litigation if this bill were to pass.

Thank you for your time.

George D. Thompson  
Fathom Five Divers

January 31, 2011

**House Committee on Tourism  
Hearing Date: Monday, January 31, 2011**

**Testimony in Support of HB 548 - Relating to Trespass**

Honorable Chair Tom Brower, Vice-Chair James Kunane Tokioka and Tourism Committee Members:

My name is Marissa Sandblom, and I am the Vice President of Grove Farm Company, Inc. Grove Farm is headquartered in Lihue, and owns approximately 40,000 acres on Kaua'i, making it one of Kaua'i's largest private landowners. Throughout our transition from a sugar plantation to a sustainable community development and economic development company, we have remained committed to our island community.

Grove Farm appreciates this opportunity to testify and is **in strong support** of HB 548, which provides that an author or publisher of a guide book or visitor guide publication and/or website shall be held liable for any injury or death of a person where the publication or website causes the person to commit the offense of trespass in the second degree.

Grove Farm's support is based on the fact that there are many guide books and visitor guide destination publications that seemingly invite potential visitors to trespass on remote private property to experience an attraction or activity. Grove Farm owns Kipu Falls and the land surrounding it and while the area is privately held, guide books and other publications constantly refer to the area and provide detailed information on how to access the area, enticing people to trespass.

**Grove Farm's Position.** As a longtime kama'aina company, Grove Farm is committed to continue being a responsible steward of our aina. We believe that due to the risks of encouraging people to visit areas on private land, including such information in guidebooks or visitor destination publications is inherently irresponsible. Visitors frequently rely on guide books and other similar publications to learn about available activities and attractions and describing how to access an area of private land can lead to disastrous consequences. We have taken steps strongly encouraging an author of a popular, widely circulated guidebook to refrain from mentioning our landholdings that are not available for public access, to no avail.

Grove Farm is in **strong support to HB 548**, which provides that an author or publisher of a guide book or visitor guide publication or website shall be held liable for any injury or death of a person where the guide book, publication or website causes the person to commit the offense of trespass in the second degree.

Thank you for the opportunity to express our support for this matter.

**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII ASSOCIATION FOR JUSTICE (HAJ) formerly known as the CONSUMER LAWYERS OF HAWAII (CLH) IN OPPOSITION TO H.B. NO. 548**

January 31, 2011

To: Chairman Tom Brower and Members of the House Committee on Tourism:

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. 548.

The provisions in Section 2 of this bill on page 2 states that an author, publisher shall be civilly liable for a visitor's injury or death if invites the visitor to commit a criminal offense. HAJ would 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. Further, in subsection (b) on lines 19-21, it provides for immunity to the legal owner or legal occupier of the land. HAJ opposes this immunity provision but suggests as an alternative that the legislature should consider that the landowner should have a cause of action against the visitor guide publication if that is the intent of this bill. 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.

The other issue is that by amending the criminal law statute, the penal code, located in Chapter 708, Hawaii Revised Statutes, it affects the prosecution of a person who is trespassing on a person's land and can result in unintended consequences.

Further, it appears that the provisions of this bill are attempting to significantly change the current law in Hawaii. This bill creates a distinction between a trespasser, an invitee and a licensee. The Hawaii Supreme Court abolished these 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.

As mentioned in the first part of this testimony, this bill basically gives immunity to a landowner. 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 owes no duty to a trespasser whose presence on the land is unknown; nor is there a duty to discover the presence of trespassers. However, if with regard to an anticipated trespasser, the landowner may owe a duty to warn of dangerous conditions on the land that would be hidden to the person but of which the owner is aware.

This bill is a radical change in social policy and I urge this committee to do a thorough analysis before you vote to take away consumer rights.

Because of the reasons stated above, HAJ strongly opposes this bill and requests that it not pass out of this committee. Thank you for the opportunity to testify.





## **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](mailto:HCattlemens@hawaii.rr.com)

### HOUSE COMMITTEE ON TOURISM

Monday January 31<sup>st</sup>, 2011, 9:15 a.m. Room #312

#### HB 548 RELATING TO TRESPASS

Holds authors and publishers of visitor websites and publications liable to readers who suffer injury or death as a result of being enticed to trespass; exempts property owners from liability.

Chair Brower, Vice Chair Tokioka 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 the HB 548.

Landowners, including cattle ranchers statewide, have been having terrible problems over the years with trespassers. In some case, trespassers come on our lands to maliciously do damage to our property and in other cases cut fences or leave gates open, sometimes allowing cattle to get out onto the road. Often, when a car hits a cow it leads to disastrous results for both the cow and the car occupants leading to major liability for the cattle rancher. In other cases, trespassers sometimes get injured while trespassing, and then have the audacity to sue the landowner for the results of their illegal trespass activity. While in some cases the trespasser does not prevail in court, the landowner must nevertheless spend time and money to defend themselves. To add insult to injury, the publishers and authors of these guide books who encourage people to trespass on our private lands are immune to responsibility.

Some of these guide books imply that the trespassing won't hurt anyone, after all the landowner sometimes charges visitors to go on the same hike or activity. Of course the difference is people trespassing get no safety briefing or the benefit of an experienced guide or chaperone who can keep them away from dangerous areas or situations.

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



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

2343 Rose Street, Honolulu, HI 96819  
Phone: (808) 848-2074; Neighbor Islands: 1-800-482-1272  
Fax: (808) 848-1921; e-mail: [info@hbf.org](mailto:info@hbf.org)

**Committee on Tourism**  
January 29, 2011

**Testimony**

**HB 548 RELATING TO TRESPASS**

Chair Brower and Members of the Committee:

Hawaii Farm Bureau Federation on behalf of our commercial farm and ranch families and organizations on the island is in **strong support with comment** of the intent of HB 548, holding authors of publications and websites liable for readers who suffer injury or death during the conduct of trespass and exempts property owners from liability.

Maui's farmers and ranchers have been victimized by trespassers who read about scenic and recreational locations that can be approached by trespassing through farm and ranch lands. In the process, our lands have become dumping grounds for stolen goods or crime. We strongly support the intent of this measure to protect our landowners from liability for injuries to trespassers and to protect them against damage to their property.

Many of our farms and ranches are included in articles in travel magazines, newspapers, and on the web – even referencing the websites of the farm and ranches. In seeing the pictures, people will naturally want to visit. We do not believe that the intent of this measure is to imply that by merely writing about the farm/ranch or including a picture in an article, the authors are “inviting” people on the property. The bill may need to be clarified so such authors will not be innocently included as a target by this measure that includes the term “attracts”. Our biggest concern is the authors that **specifically tell readers to ignore trespass signs or to tell people to ignore private property signs.**

We appreciate your consideration of this measure and are willing to work with you to identify language that will not result in unintended consequences. We respectfully request dialogue with the travel industry to identify workable language and ask your support in moving this bill forward.

Thank you for this opportunity to provide our opinion on this important matter. If there are questions, please contact Warren Watanabe at 808-281-9718.

# KAUAI

HAWAII'S ISLAND OF DISCOVERY

January 29, 2011

Honorable Chair Brower  
Vice Chair Tokioka  
Tourism Committee  
Hawaii State Capitol  
Honolulu, HI 96813

Re: HB 548 Relating to Trespass

Dear Chair Brower, Vice Chair Tokioka and Members of the Committee:

Mahalo nui loa for allowing HB 548 to be heard regarding the promotion, via guidebooks, websites, e-brochures, etc., of areas that are on private property that can, and have led to the injury and death of visitors.

As someone who deals with visitors on a daily basis, we work very hard to ensure we are providing as accurate and appropriate information as possible to our visitors. We see visitors walk into our office with their guidebooks, pages marked with Post-It notes, asking about various areas around the island. There are two places in those guidebooks that my staff are not allowed to give directions to: Queen's Bath and Kipu Falls. Both places have been the location of severe injury and even death for our visitors. We not only refuse to tell them how to get there, we warn them that they should not go there due to the numerous injuries and deaths that have occurred there.

Kipu Falls specifically requires anyone going to the falls to trespass on private property. Despite our attempt to inform guidebooks of our concerns of this area, many publications/websites continue to list these areas with no warning that they are sending visitors onto private land, which is in fact trespassing. If they do briefly mention it is trespassing, they say there is no enforcement – so it's OK to go there. Visitors trust these guidebooks as being the "inside scoop" for traveling to a destination and follow that which is written closely.

As someone who has had to deal with the aftermath of families that take their loved ones home from Kaua'i injured, maimed and sometimes even deceased – I have to ask "Are we all doing the right thing, and doing the best we can to inform our visitors and keep them safe?" To continue to allow visitors to go to places like Kipu Falls without proper legal notification, is like sending an innocent person into the fire with the hopes they won't get burned.

While all fatalities that happen on Kaua'i stick with me, one recent loss of a visitor has never left my mind. Mrs. Myrtle Valdez lost her husband, Jose Valdez, at Kipu Falls on December 6, 2009 in the presence of their 12 year old son. Mrs. Valdez wrote to me and asked why the guidebooks are allowed to send people to an area she did not know was private property, and was in fact dangerous, and has been the site of previous deaths? I had no answer for her other than the one I have been given year after year - "free speech".

# KAUAI

HAWAII'S ISLAND OF DISCOVERY

HB 548

cont

Testimony for HB 548

January 29, 2011

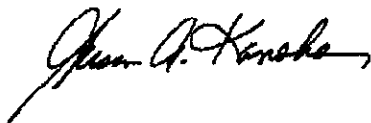
Page Two

I believe it is time that each publication/website/brochure make an effort to do right thing for our visitors and think twice about sending a person to a known place of danger/injury/death. It should not be about keeping competitive (one site/book lists it so I should too), but about doing what is right for our visitors who do not the island. I believe strongly that each guidebook, website, brochure, etc., should remove Kipu Falls, because they ask those going there to break the law and trespass. I would also hope that each of these companies will revisit their specific marketing tool(s) to see if there are other areas they could represent better so that our visitors come to Kaua'i, enjoy themselves and go home with nothing but wonderful memories of their visit, and not a hospital bill or funeral home bill and the loss of a loved one.

Mahalo nui loa for your time and consideration regarding HB 548 – I give this testimony today in the memory of Jose Valdez.

Aloha,

Sincerely,



Susan A. Kanoho  
Executive Director  
Kaua'i Visitors Bureau

# MAUI CATTLEMEN'S ASSOCIATION

*Maui Cattlemen's  
Association*

*PO Box 473*

*Kula, HI 96790*

*Board of Directors  
and Officers*

*Brendan Baltazar*

*Harry Cambra*

*Alex Franco*

*Greg Freil*

*Jimmy Gomes*

*William G. Jacintho*

*John Kim*

*Mike Murakami*

*Amber Starr*

*Toni Thompson*

*Sustaining  
ranching  
communities in  
Hawaii*

## TESTIMONY

January 29, 2011

Submitted via email: [TOUTestimony@Capitol.hawaii.gov](mailto:TOUTestimony@Capitol.hawaii.gov)

FROM: Maui Cattlemen's Association

TO: HOUSE COMMITTEE ON TOURISM  
Rep. Tom Brower, Chair  
Rep. James Kunane Tokioka, Vice Chair

HEARING DATE: Monday, January 31, 2011

HEARING TIME: 9:15am

MEASURE #: HB 548 RELATING TO TRESPASS

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

We **SUPPORT HB 548 RELATING TO TRESPASS.**

We strongly feel that Authors and Publishers of visitor websites and publications shall be liable to readers who suffer injury or death as a result of being enticed to trespass on private property. In addition, property owners should be exempted from liability. Some of these areas have naturally formed unsafe areas, and should not be recommended to anyone. It is unfair to a visitor to be put into this situation. When they realize that it's not where they want to be, matters get worst as they try to make their way around or back to their car.

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



*Maui Hotel & Lodging*  
ASSOCIATION

Testimony of  
**Carol Reimann**  
Executive Director  
Maui Hotel & Lodging Association  
on

**HB548**  
**RELATING TO TRESPASS**

COMMITTEE ON TOURISM  
**Monday, 01-31-11 9:15am**  
**Conference room 312**

The Maui Hotel & Lodging Association (MHLA) is the legislative arm of the visitor industry. Our membership includes approximately 120 property and allied business members – all of whom have an interest in the visitor industry. Collectively, the MHLA membership employs over 10,000 Maui County residents.

MHLA is in **strong support with comment** of the intent of HB548, holding journalists, publications and websites liable for readers who suffer injury or death during the conduct of trespass and exempts property owners from liability.

Visitors are lured into trespassing onto private property (i.e. farmers and ranch lands) by irresponsible journalists and publications. These journalists/publications recklessly explain in detail about scenic and recreational locations that can be “discovered” or “revealed” by illegally trespassing. In the process, private properties are often times violated - they become dumping grounds for stolen goods and crime. We strongly support the intent of this measure to protect landowners from injuries or damage to trespassers and their property.

People read articles in publications and see stunning visuals on websites of out-of-the-way, unique locations of natural beauty. By learning of these extraordinary sites, people naturally want to seek them out.

We do not believe that the intent of this measure is to imply that by merely writing about a unique location or including a picture in an article or website means that the journalists are “inviting” people to seek out the special location. There may need to be clarification so such journalists will not be innocently included as a target by this measure that includes the term “attracts” or “entices.” It is our hope that this bill only target the authors that specifically tell people to ignore trespass signs or to ignore private property signs.

We appreciate your consideration of this measure to avoid unintended consequences to responsible journalists; and move this bill forward.

Thank you for the opportunity to testify.



RE: HB 548 Relating to Trespass

Aloha Chairman Brower and Committee Members

Thank you for taking an interest in this matter. As a Visitors Bureau we receive complaints from visitors and landowners who have told us that they have been sent to areas by guidebooks only to find they should not be there at all.

Some of the guidebooks also "trash" businesses that in my opinion should not be allowed. I would ask whose opinion is this? As we know many folks carry different experiences and one bad experience should not be reason to "trash" a business.

The calls we receive are often of incidents where people have gone places that are sometimes culturally sensitive, private lands or sometimes places that are downright dangerous and could cause injury or death. Sometimes we are told of incidents where folks are told to go to a trail that may not be a "certified trail" but rather crosses private land or may be hazardous to an individual.

A property owner has begged us to help him do something about trespassers who leave behind feces, trash, tear down fences etc. and tell him they have found this place through guide books. The trespassing causes animosity between owners and visitors and could lead to volatile circumstances.

Thank you for your consideration on this matter and we do hope there is a way to make guidebook writers/publishers responsible for what they publish.

Aloha,

Terryl Vencl  
Executive Director



## HOUSE COMMITTEE ON TOURISM

Monday January 31<sup>st</sup>, 2011, 9:15 a.m. Room #312

### HB 548 RELATING TO TRESPASS

Holds authors and publishers of visitor websites and publications liable to readers who suffer injury or death as a result of being enticed to trespass; exempts property owners from liability.

Chairmen Brower and Tokioka and Members of the Committee:

My name is Karin Carswell Guest, and I am one of the owners of Princeville Ranch on the island of Kauai. I **strongly support** HB 548.

We run eco-tours on the North shore of Kauai and are constantly dealing with Trespassers on our property. Much of the way visitors find out about areas on private lands is through visitor websites and publications. These authors are putting visitors in danger by recommending they visit these private areas. And they are disregarding the fact that it is on private lands. We are constantly asking trespassers to leave the premises and have to spend our time and resources to do this. If a trespasser is injured on our property, we run the risk of being sued and having to defend ourselves when they knowingly entered private property. The authors of these publications should absolutely be held accountable for the thousands of visitors that are put in danger from their recommendations every year.

This excerpt clearly shows the disregard for private property on our ranch by this particular author:

“The Kalihiwai is short but very sweet. You can kayak it in an hour...the scenery is the best of the four....Expect to be hassled if you visit the falls in any way that doesn't bring money to the horseback company that leases the land where the falls are.” The Ultimate Kauai Guidebook 7<sup>th</sup> Edition by: Andrew Doughty. When visitor's travel unescorted they do not have the supervision and expertise afforded the people who use the same attraction but pay for the privilege and get safety briefings. Thus, many trespassers run the risk of injury and/or death and may in turn try to sue the owners.

Kipu Falls is another private area on the island that visitors hike to on a daily basis. Hundreds of people have been injured there and many people have died there. Visitors are finding out about private attractions like these because of visitor publications by irresponsible authors. And this is why I am in favor of holding authors liable if their readers suffer injury or death as a result of being enticed to trespass.

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

**Princeville Ranch Adventures**  
**P.O. Box 224**  
**Hanalei, HI 96714**  
**808-826-7669**



From: mailinglist@capitol.hawaii.gov [mailto:mailinglist@capitol.hawaii.gov]  
Sent: Sunday, January 30, 2011 1:16 PM  
To: TOUtestimony  
Cc: galealoha@gmail.com  
Subject: Testimony for HB548 on 1/31/2011 9:15:00 AM

Testimony for TOU 1/31/2011 9:15:00 AM HB548

Conference room: 312  
Testifier position: support  
Testifier will be present: No  
Submitted by: Gale Carswell  
Organization: Individual  
Address:  
Phone:  
E-mail: galealoha@gmail.com  
Submitted on: 1/30/2011

Comments:

From: mailinglist@capitol.hawaii.gov [mailto:mailinglist@capitol.hawaii.gov]  
Sent: Saturday, January 29, 2011 1:28 PM  
To: TOUtestimony  
Cc: wmdowns2000@yahoo.com  
Subject: Testimony for HB548 on 1/31/2011 9:15:00 AM

Testimony for TOU 1/31/2011 9:15:00 AM HB548

Conference room: 312  
Testifier position: support  
Testifier will be present: No  
Submitted by: monty downs, M.D.  
Organization: Individual  
Address: 160 lani alii place Kapaa, HI  
Phone: 808-822-3695  
E-mail: wmdowns2000@yahoo.com  
Submitted on: 1/29/2011

Comments:

4 young visitors have been killed in the last 3 years at an exotic Kauai locale known as Kipu Falls. And one very dear 18 year old California women's volleyball star was rendered quadriplegic for life. Many others have been maimed -- I see these people all too frequently in my work venue at the Wilcox Hospital ER.

Kipu Falls is too dangerous a locale for visitors. The Ultimate Kauai Guidebook, as well as any number of internet websites, give people exact directions on how to get to this otherwise very hidden and inaccessible (and private-property!) spot, and the Ultimate Guidebook even advertises Kipu Falls as "A Real Gem."

This, please God, has to stop, and I am very excited that HB548 has been introduced and I very much hope that it will pass and become Law, thereby averting future tragic and family-shattering deaths, at Kipu Falls and I assume at some other comparable locales around the State.

Aloha,

My name is Cass Foster and I'm a recently retired theatre professor who moved to Kauai from Arizona. My wife and I are unquestionably one of the most fortunate couples on this planet. We could not be happier with Hawaii and Kauai specifically.

I would like our situation to remain that way so I'm seeking your assistance. This is in reference to the legislative matter of HBs 548 and 552 – where if (552 – to paraphrase:) the reader trespasses onto private property to access an attraction that the publisher (not the land owner) will be held liable for injuries sustained by the reader on the private property. And at the same time 548 would exempt the property owners from liability should they be in any way negligent. And unless I'm mistaken, Hawaii Revised Statutes section 520 already provides protection to private landowners.

I am in the midst of writing a 90 comedy about the history of Hawaii. The play will include references to sites and locations on many of the Islands that could easily result in the readers visiting these places - since it is the intention of increasing tourism to Hawaii and showing off our great state.

All published works related to Hawaii would need to be revisited and **all** future publishing plans could be terminated if they have anything to do with writing or photography or possible film work about Hawaii. This has the potential to be a staggering economic nightmare to Hawaiians overall.

But worse, and I speak quite selfishly, my script can in no way be published or staged. Three actors portray nearly 60 characters telling the past 1500 years of Hawaii's history in a way that is informative and (we can only hope) endless laughter. This legislation will prevent this or anything related from being published, staged or aired. This is truly Big Brother in 2011 leading the charge in censorship.

If those of you who introduced the bill are rightfully concerned about protecting land owners from lack of control over a publisher or author possibly sending someone to their property that eventually gets hurt please revisit Hawaii Revised Statutes section 520 protecting private landowners.

I hope the newly elected governor and the entire legislative body will be cautious about any influence to legislate in a manner that prevents or fears a free and open discourse to air and explore all perspectives. I have no doubt good thought has already gone into this matter. I'm just suggesting too little has been made public to believe sufficient thought has been given to a variety of interests.

I thank you for your time and look forward to your assistance.

**Cass Foster**  
Kauai

-----Original Message-----

From: mailinglist@capitol.hawaii.gov [mailto:mailinglist@capitol.hawaii.gov]

Sent: Sunday, January 30, 2011 1:15 PM

To: TOUtestimony

Cc: jguest@hawaii.rr.com

Subject: Testimony for HB548 on 1/31/2011 9:15:00 AM

Testimony for TOU 1/31/2011 9:15:00 AM HB548

Conference room: 312

Testifier position: support

Testifier will be present: No

Submitted by: Jeff Guest

Organization: Individual

Address: 5287 Kapaka St. Princeville, HI 96722

Phone: 808-826-9777

E-mail: jguest@hawaii.rr.com

Submitted on: 1/30/2011

Comments:

From: mailinglist@capitol.hawaii.gov [mailto:mailinglist@capitol.hawaii.gov]  
Sent: Friday, January 28, 2011 9:19 PM  
To: TOUTestimony  
Cc: mmartin@whalerscoveresort.com  
Subject: Testimony for HB548 on 1/31/2011 9:15:00 AM

Testimony for TOU 1/31/2011 9:15:00 AM HB548

Conference room: 312

**Testifier position: support**

Testifier will be present: No

Submitted by: Marianne

Organization: Individual

Address: Lihue, HI

Phone:

E-mail: mmartin@whalerscoveresort.com

Submitted on: 1/28/2011

**Comments:**

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