

**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII  
ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION TO S.B. NO. 1079, SD2,  
Proposed HD2**

April 5, 2011

To: Chairman Gilbert Keith-Agaran and Members of the House Committee on Judiciary:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in opposition to S.B. No. 10479, SD2, Proposed HD2.

The provisions in Section 1 of the proposed HD2 of this bill on page 1 basically provide that an owner of range land does not owe a duty of care toward a trespasser for injury occurring on range land which is defined in this bill. This bill focuses on what has been said to be a problem that ranchers and cattlemen are concerned about; that is, liability to trespassers.

However, 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, at a minimum, the proponents of this bill should at least provide the legislature with the information that is stated above before a major public policy decision is rendered.

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 owners of range land in sparsely populated rural ranching areas. As background we want to stress 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.

Also, 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 fundamental change in public 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 other measures are more appropriate.

Thank you for the opportunity to testify in opposition to this bill.

**FW: SB 1079, SD2, HD1**

JDLTestimony

**Sent:** Tuesday, April 05, 2011 10:30 AM**To:** JUDtestimony

LATE TESTIMONY

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**From:** Carl Bredhoff [mailto:sootbr@msn.com]**Sent:** Tuesday, April 05, 2011 9:57 AM**To:** JDLTestimony**Subject:** SB 1079, SD2, HD1

April 5, 2011

**To:** Representative Gilbert Keith-Agaran, Chair  
House Judiciary Committee**From:** Carl "Soot" Bredhoff**Re: SB 1079, SD2, HD2**

Dear Representative Keith-Agaran,

I was one of the Paniolo that was honored last Thursday on the House floor, and it was a pleasure to meet you and your colleagues. We all appreciated the time you took to have lunch with us.

I have spent 42 years actively in the Hawai'i Cattle Industry and since retiring in 2000 have kept involved one way or another.

I am writing to ask you to support SB1079. There are a couple of points in the bill, however, that I think should be changed.

1. Where the bill states that fencing should be such that it keeps people out is not practical at all. We fence to keep the livestock in. A fencing contractor is presently working on Maui. His quote is \$3.50/ foot or \$18,480 per mile. That is for a conventional hog wire fence 5 feet high. To construct a higher fence would cost considerably more. That is asking too much of a rancher to change all off his fencing. The conventional hog wire or barbed wire fence along with a no trespassing sign should be enough.

Signs can be controversial because I have had poachers, standing right by a sign, nailed to a tree, tell me that they had not seen the sign.

2. I feel that a ranch off 5 acres or less should not be excluded. Often times the owner does not live close by and his livestock may be proportionally as valuable to him as the rancher with 500 acres (ex. goats on the 5 acres).

3. I strongly feel that all farms should included in this bill as the farmers (vegetable crops, flowers, aquaculture, taro, etc.) in the state are exposed to the same trespassing and theft problems as the ranchers.

I won't go into all of the trespassing problems that I have encountered as I guess they have been already stated by in others testimony, but my experiences at Kaupo on Maui and also on Hawai'i have been numerous to say the least.

Obviously the most potentially dangerous circumstances are when one apprehends poachers who are armed.

Representative Keith-Agaran, I appreciate your consideration of my concerns with SB 1079 SD2 HD1 and your support of it.

Sincerely,

Carl "Soot" Bredhoff

# LATE TESTIMONY

Aloha All,

I am the Director of Safety and Security for Parker Ranch Inc. I am testifying as an individual, and strongly support the intent of this bill as does our ranch. The requests for amending this bill are from my point of view.

On the Island of Hawaii, a number of our neighbors conduct agricultural activities in areas smaller than 5 acres. Hawaii needs to protect all of our farmers and ranchers, big and small. In the past, where I live the county allowed the breaking of large agriculture zoned areas into smaller parcels. Everyone speaks of sustainability, the small farmers and ranchers are the backbone of this movement. I feel that, the no duty of care provision should be extended to all farms and ranches.

I was a police officer for over 15 years; I feel strongly that Parents should be responsible for their children. Farms and ranches are inherently dangerous and cannot be made safe for the unknowing. When I was a police officer I responded to many situations where children placed themselves in dangerous situations being that they were not supervised, and ventured into dangerous venues.

Trespassing, equipment and theft to crops, property damage are a major problem. Many of my ranching and farming neighbors don't report these crimes as they are numerous. When these incidents occur, it utilizes time and places farmers and ranchers in danger when confronting trespassing individuals.

From my own experiences on our ranch: due to our large land area, trespass is frequent. From hiking, illegal hunting and gathering, site seeing, exercising etc.

The non-hunting trespassers when confronted often feel they have the right to roam. These are individuals that are normally seen in the public as good people. I have met many of them on our property. 70% of them are verbally confrontational. They damage our gates and fences by climbing over them and by removing fence clips or cutting lower strands of wire to crawl through and to allow their dogs in. This allows our cattle to come out and adds man hours to repair. Their dogs often chase our cattle placing them in danger not to mention placing our people in danger who are working in the pastures. Interior pasture gates are opened or closed by trespassers allowing cattle to move where they are not supposed to go. This makes more work for our people. Trespassers are often seen trying to pet calves and cows placing them in danger.

The illegal hunters (poachers, outlaws) are always armed. Either with knives, or firearms. The majority hunt at night with the use of dogs. Some are opportunist, driving rural roads until their dogs alert them of game in the pastures, then jump the fence and pursue the game with no regards to our cattle. Their dogs often chase our cattle which run through fences injuring them and fencing repairs.

Some illegal hunters use ATV's in which they cut fences in remote areas of our ranch to hunt for feral pigs. A few months ago we had over a hundred head of cattle leave our

pastures into a State Forest Reserve and Kamehameha schools forest from a cut fence. Days were spent to put up new trap-gates for the cattle and too round up the cattle in the surrounding forests and move them back into our pastures, and for the fence repair. Not to mention patrol hours by cowboys and security for this area. This particular fence line is checked daily when cattle are in there. A lot of time is expended due to the actions of trespassers.

A lot my time is spent patrolling at night, a huge majority of illegal hunters hunt at night. Normally the moonlit nights are the best for them, but with technology, night vision, gps tracking collars etc. It gives them an advantage on dark and foggy nights. Confronting the outlaws at night is very dangerous and time consuming for me.

When trespass incidents require police assistance, response time is slow or nonexistent. The average response time for me is 45 minutes. This is a long time to wait with armed people by yourself that don't want to be with you. The police are often shorthanded and not equipped or educated on these laws. They almost always ask me what the charges will be.

I feel that beefing up our laws and enforcing them, along with educating the police and the public of these laws will help. Educating the public is the key to this. When the public starts to respect Hawaii's agriculture areas and realizes that where they trespass and disrupt our operations is our place of business, and realizes this is where our food is grown or raised the agriculture industry in Hawaii will prosper.

If anyone has any questions feel free to contact me. Thank you for your time on this important matter.

Aloha,

**Shane Muramaru**  
**Director of Safety and Security, Parker Ranch, Inc.**



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Governor



State of Hawaii  
DEPARTMENT OF AGRICULTURE  
1428 South King Street  
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RUSSELL S. KOKUBUN  
Chairperson, Board of Agriculture

JAMES J. NAKATANI  
Deputy to the Chairperson

LATE TESTIMONY

TESTIMONY OF RUSSELL S. KOKUBUN  
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE HOUSE COMMITTEE  
ON  
JUDICIARY

TUESDAY, APRIL 5, 2011  
2:00 P.M.  
CONFERENCE ROOM 325

SENATE BILL NO. 1079, S.D. 2, H.D. 2 PROPOSED DRAFT  
RELATING TO LANDOWNER LIABILITY

Chairperson Keith-Agaran and Members of the Committee:

Thank you for the opportunity to testify on Proposed Senate Bill No. 1079, S.D.2, H.D. 2. The purpose of this bill is to establish that an owner of range land owes no duty of care, under certain conditions, toward a trespasser for injury suffered by the trespasser that occurs on range land or to warn the trespasser of dangerous natural conditions or range activities or uses. It also clarifies the offense of criminal trespass in the second degree as it relates to land that is fallow or has evidence of livestock-raising, and authorizes a \$10,000 fine for this offense. The department supports the intent of this bill, however strongly requests that irrigation systems and their access trails be included in this bill by adding in the changes listed below. We defer all legal matters to the Department of the Attorney General.

The Department offers the following amendments to Section 1. The amending language is double-underscored.

“§663- Trespass; no duty of care; liability of owner. (a) An owner of range land, or irrigation system and its associated access trails, owes no duty of care to a trespasser for injury to, property damage, or death of the trespasser that occurs on range land, or irrigation



system and its associated access trails, or to warn the trespasser of dangerous natural conditions or range or irrigation activities or uses; provided that the range land, or irrigation system and its associated access trails:

- (1) Is fenced, enclosed, or secured in a manner designed to exclude trespassers; and
- (2) Has at least one sign displayed on the range land, or irrigation system and its associated access trails, that is sufficient to give notice and that reads: "Private Property No Trespassing". The sign shall contain letters not less than two inches in height, and shall be placed along the boundary line of the agricultural or range land, or irrigation system and its associated access trails, in a manner and position that is clearly noticeable from outside the boundary line. Where an owner knows or reasonably should know of the presence of trespassers in an area or areas of range land, or irrigation system and its associated access trails, a sign or signs sufficient to give notice shall be placed at such area or areas.

(b) Nothing in this section shall limit the liability of a range land owner, or irrigation system and its associated access trails, whose acts are grossly negligent, in willful or wanton disregard of the safety of a trespasser, or who intentionally causes injury, property damage, or death to a trespasser. This section shall not apply to minor children twelve years of age or younger where the owner knows of or reasonably should anticipate the presence of such children on range land.

(c) The duty of care of an owner of range land who allows recreational use of range land shall be as provided in section 520-3.

(d) As used in this section:

"Access trail" means any foot, animal, or vehicular trail used to access any part of an irrigation system.

"Irrigation system" or "system" means the intakes, ditches, flumes, weirs, siphons, reservoirs, tunnels, pipelines, valves, pumps, and controls, and other elements comprising an irrigation system operated by the board to serve the lands within an irrigation district as defined by the board.

"Range land" means any land exceeding five acres that is used primarily for range use, including livestock grazing, dairying, or keeping of equine, bovine, and similar livestock, such as cattle, horses, sheep, and goats. Range land includes appurtenant roadways, waterways,



buildings, structures, and machinery or equipment attached to the land that is used in connection with range land activities. Range land in rural areas may include multiple parcels of less than five acres in size that together exceed five acres in the aggregate, when operated as a single venture.

"Trespasser" has the same meaning as section 708-815."

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. We believe the deletion of the phrase "...other than lands owned by the government." would allow public lands and irrigation systems to be covered by the expanded reach of this bill. It is also important to recognize that our employees have NO enforcement power to escort trespassers off of State land.

Thank you for the opportunity to testify on this measure.