

SB1079
TESTIMONY

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 Senate Committees on
JUDICIARY AND LABOR
and
AGRICULTURE

Monday, February 7, 2011
9:45 A.M.
State Capitol, Conference Room 016

In consideration of
SENATE BILL 1079
RELATING TO THE LANDOWNER LIABILITY

Senate Bill 1079 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

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

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Jimmy Gomes

William G. Jacintho

John Kim

Mike Murakami

Amber Starr

Toni Thompson

*Sustaining
ranching
communities in
Hawaii*

TESTIMONY

February 4, 2011

Submitted via email: JDLTestimony@capitol.hawaii.gov

FROM: Maui Cattlemen's Association

TO: Senate Committee JDL/AGL, WAM

HEARING DATE: Monday, February 7, 2011

HEARING TIME: 9:45 a.m. Conference Room 016, State Capitol

MEASURE: SB 1079

COMMITTEE ON JUDICIARY AND LABOR

Senator Clayton Hee, Chair

Senator Maile S.L. Shimabukuro, Vice Chair

COMMITTEE ON AGRICULTURE

Senator Clarence K. Nishihara, Chair

Senator Gilbert Kahele, 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 SB 1079.** 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 than 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.

Trespassers go in and vandalize the area

They ride motorcycles tearing up the place. This creates a liability for rancher.

They 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.

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 this 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 Senate Bill. As you can see, this bill is very important for the Agriculture industry. **Please support Senate Bill 1079.**

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

Sincerely,

William Jacintho, President

Amber Starr, Vice President

From: Ernest H. Rezens [ernie@maui-arborist.com]
Sent: Friday, February 04, 2011 8:58 AM
To: JDLTestimony
Cc: e.rezens@hawaiiantel.net
Subject: SB 1079

Dear Senator,

I am in favor of SB 1079. Trespassers enter my land and take without permission breadfruit and taro leaf. I have cattle in the pasture which is completely fenced. I am concerned about the liability factor. I recommend hat SB 1079 be passed and made into law. Ernest H. Rezens

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, February 05, 2011 10:52 AM
To: JDLTestimony
Cc: flammerfamily@aol.com
Subject: Testimony for SB1079 on 2/7/2011 9:45:00 AM

Testimony for JDL/AGL 2/7/2011 9:45:00 AM SB1079

Conference room: 016
Testifier position: support
Testifier will be present: No
Submitted by: Gina Flammer
Organization: Individual
Address:
Phone:
E-mail: flammerfamily@aol.com
Submitted on: 2/5/2011

Comments:
Thank you for your support. We need this bill.

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, February 05, 2011 7:22 PM
To: JDLTestimony
Cc: aemmsley@hawaii.rr.com
Subject: Testimony for SB1079 on 2/7/2011 9:45:00 AM

Testimony for JDL/AGL 2/7/2011 9:45:00 AM SB1079

Conference room: 016
Testifier position: support
Testifier will be present: No
Submitted by: Ann Emmsley
Organization: Individual
Address: 2855 Kamaile St Wailuku, HI 96793
Phone:
E-mail: aemmsley@hawaii.rr.com
Submitted on: 2/5/2011

Comments:

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

February 7, 2011

To: Chairmen Clayton Hee and Clarence Nishihara and members of the Senate Committees on Judiciary and Labor and 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 S.B. No. 1079.

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.

Further, 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 want to make it clear 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 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 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.