



SB 1079
RELATING TO LANDOWNER LIABILITY
Senate Committee on Judiciary and Labor
Senate Committee on Agriculture

February 7, 2010

9:45 a.m.

Room 016

The Office of Hawaiian Affairs (OHA) offers the following COMMENTS on SB 1079. Native Hawaiians enter onto private and public lands to exercise their traditional and customary practices, sometimes without receiving an explicit invitation from the landowner. Although Native Hawaiian traditional and customary practitioners would be able to use their constitutionally protected traditional and customary rights as a defense to trespassing, having to prove these rights as a defense to a criminal prosecution can be overly burdensome.

OHA suggests the following amendments, which can be reasonably accommodated within the statutes, to ensure recognition and protection of Native Hawaiian traditional and customary rights:

- Replace the bill's language on page 3, lines 16-18, with:
"Trespasser" means a person who enters or remains on land without the permission of the owner or the owner's agent and who is neither an invited guest nor otherwise privileged to do so, such as a person who is exercising a traditional and customary practice pursuant to Haw. Const. Art. XII § 7, HRS § 1-1, and/or HRS § 7-1.
- Change page 5, lines 19-22, of the bill to read:
(c) The person enters or remains on agricultural lands without the permission of the owner of the land, the owner's agent, or the person in lawful possession of the land, or without the privilege to otherwise do so, and the agricultural lands:
- Add the following language after line 16 on page 6:
(d) The person enters or remains unlawfully on unimproved lands or unused lands without the permission of the owner of the land, the owner's agent, or the person in lawful possession of the land, or without the privilege to otherwise do so.
- Add a new section to the bill amending HRS § 708-800 as follows:

“Enter or remain unlawfully.” A person “enters or remains unlawfully” in or upon premises when the person is not licensed, invited^[7] by the land owner or lawful occupier of the land, or otherwise privileged to do so, such as a person who is exercising a traditional and customary practice pursuant to Haw. Const. Art. XII § 7, HRS § 1-1, and/or HRS § 7-1.

OHA urges the committee to make the aforementioned amendments.
Mahalo nui loa for the opportunity to testify.

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, February 06, 2011 1:39 PM
To: JDLEstimony
Cc: gottlieb@hawaii.rr.com
Subject: Testimony for SB1079 on 2/7/2011 9:45:00 AM
Attachments: SB 1079 2011 Trespass Jud-Agr.pdf

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

Conference room: 016
Testifier position: support
Testifier will be present: Yes
Submitted by: Alan Gottlieb
Organization: Hawaii Cattlemen's Council
Address:
Phone: 808-306-7769
E-mail: gottlieb@hawaii.rr.com
Submitted on: 2/6/2011

Comments:

Expand to include
irrigation systems



Hawaii Cattlemen's Council, Inc.

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SENATE COMMITTEE ON JUDICIARY AND LABOR
SENATE COMMITTEE ON AGRICULTURE
Monday February 7, 2011 9:45 a.m. Room 016

SB 1079 RELATING TO LANDOWNER LIABILITY

Establishes a criminal trespass on agricultural lands enforcement fund; provides that owners of agricultural land or range land have no duty of care to trespassers; establishes rebuttable presumption of no liability; permits trespasser to overcome presumption by preponderance of evidence that owner was grossly negligent or intentionally injured the trespasser; authorized fines of up to \$10,000 for the offense of criminal trespass on agricultural lands.

Chairman Hee, Chairman Nishihara 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 SB 1079.**

Trespassing crimes are very serious to cattle ranchers and other agricultural commodities across the state. Trespassers cause damage to property, increase liability to operators, and pose a serious threat to our food safety issues. This past year, there have been several incidents where trespassing vandals destroyed papaya farms on Oahu and the Big Island, costing farmers tens of thousands of dollars.

Property damage, such as livestock caught in snares, damaged fences, stealing of agriculture products can be irreversible for the landowner. Thousands of dollars are spent per year in repairing damages created by trespassers and it affects the economic survival for all ag commodities. We are often easy targets because of our remote locations, easy access and limited surveillance. We have a responsibility to be good stewards of our land and trespassers make it difficult to continue that without proper consequences.

Liability is also a tremendous burden for landowners. This bill will limit that liability when trespassers try to claim injury sustained on private property. Landowners cannot have a legal duty to protect a person who is uninvited onto the property and gets injured because of any natural risks or hazards that are inherent characteristics of agricultural land. This bill would reduce landowner's liability and thus the need for excessive and costly general liability insurance.

Food safety is another issue. If agriculture and the food production system is constantly the target for disruption, destruction or altering of the production of food, it will pose a serious problem for the food safety of our entire state. In times when we are trying to increase local food production state wide, agricultural landowners need to carry less liability and need to be encouraged to have profitable ag enterprises.

We believe the enforcement fund included in this bill is a necessary component to improve our trespass laws. Even with existing Trespass laws on the books, one of our biggest challenges has been to get the law enforcement community to respond in a timely manner, arrest and prosecute trespassers to the full extent of the law. We realize law enforcement, like everything else these days, must manage scarce resources to the best of their ability, and unfortunately, trespassing often falls low on their list of priorities. We hope that by increasing the fine for trespassing to \$10,000 and directing the fines to help the counties improve trespass enforcement, we can help to reduce trespass.

In closing, trespassers can ultimately create intense damage to our agricultural economy and this needs to be prevented by stricter laws and stiffer fines. We need to increase advocacy for farmers and ranchers who want to continue to produce food in an efficient, profitable, and responsible manner. Government needs to protect the intrinsic value of ranchers and farmers for the present and the future, by making greater efforts to limit liability of all agricultural landowners and SB 1079 will create that.

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

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, February 06, 2011 9:19 PM
To: JDLEstimony
Cc: ashman.janet@gmail.com
Subject: Testimony for SB1079 on 2/7/2011 9:45:00 AM
Attachments: SB1079 trespass fund_no duty of care_fines jdl agl hbf.doc

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

Janet Ashburn

Conference room: 016
Testifier position: support
Testifier will be present: Yes
Submitted by: Hawaii Farm Bureau Federation
Organization: Hawaii Farm Bureau Federation
Address: Hawaii
Phone: 8082265483
E-mail: ashman.janet@gmail.com
Submitted on: 2/6/2011

Comments:
Strong support, with amendments.

2 bills - many relatives to visit guide liability



LATE TESTIMONY

2343 Rose Street, Honolulu, HI 96819
Phone: (808) 848-2074; Neighbor Islands: 1-800-482-1272
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Senate
Committee on Judiciary and Labor
and
Committee on Agriculture

February 7, 2011

SB 1079 RELATING TO LANDOWNER LIABILITY

Chair Hee, Chair Nishihara, and Members of the Committees,

Hawaii Farm Bureau Federation, on behalf of our commercial farm and ranch families and organizations across the State, **strongly supports SB 1079.**

Farmers and ranchers need your help.

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.

In addition, there are individuals who trespass, hurt themselves, and then threaten to sue us for their injuries. We cannot afford to lose everything we work so hard to create, in litigation due to trespass. There is certainly no benefit provided to the farmer or rancher from these trespassers or their activities and there should be only a minimal duty of care owed to them.

This bill 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 (no liability 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. Just as every homeowner is not required to fence in his property and post signs to keep trespassers out, a farmer or rancher 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 of Hawaii who would like to continue to supply food to our residents and visitors, and help Hawaii move toward food self-sufficiency. We would be pleased to answer any questions, please contact Janet Ashman, at 226-5483.

LATE TESTIMONY

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 07, 2011 6:44 AM
To: JDLTestimony
Cc: amber@hanaranch.net
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: Amber Starr
Organization:
Address: Hana Hana
Phone: 573-6444
E-mail: amber@hanaranch.net
Submitted on: 2/7/2011

Comments:

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, February 06, 2011 8:15 PM
To: JDLEstimony
Cc: Karinguest@hawaii.rr.com
Subject: Testimony for SB1079 on 2/7/2011 9:45:00 AM
Attachments: testimonySB1079.docx

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: Karin Carswell Guest
Organization: Kauai Cattlemen's Association
Address:
Phone:
E-mail: Karinguest@hawaii.rr.com
Submitted on: 2/6/2011

Comments:

LATE TESTIMONY

KAUAI 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 Kauai Cattlemen's Association is a non-profit organization representing small and large livestock producers in Kauai County.

We strongly support SB1079. Trespassing is an ongoing problem for many ranchers state wide. When trespassers cause damage to private property it exposes landowners to increased liability and increased economic duress. The ranching business, as well as other ag commodities, struggle from year to year to make ends meet and when trespassers cause damage the effects can be devastating. The time and effort it takes to track down trespassers and prevent them from returning also causes stress and hardship on the rancher. . If this bill is passed, it will limit liability to the ranchers and landowners if trespassers take legal action when injured on private property.

By creating the enforcement fund stated in this bill, it will improve the ability for law enforcement agencies to have the manpower and resources it takes to arrest trespassers. A stiffer penalty will be a deterrent to people who think they can enter private property uninvited. This in turn will make people think before they enter.

Food Security is a major issue and creating and maintaining local food supply is critical. When ag commodities are constantly dealing with trespassers, local food production is hampered. If stricter fines are created for trespassers and less liability to landowners is established, the goal towards being sustainable ranches and farms, for generations to come, can be attainable.

All in all, The Kauai Cattlemen's Association strongly favors SB1079 for the livelihood of our ranches and farms.

Thank you,

Karin Carswell Guest

Executive board member

Kauai Cattlemen's Association

LATE TESTIMONY

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, February 06, 2011 7:44 PM
To: JDLTestimony
Cc: diamondbranchhi@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: Brendan Balthazar
Organization: Maui Cattlemans Assn.
Address: 103 Maha Rd Makawao Maui. Hi.96768
Phone: 8085728102
E-mail: diamondbranchhi@aol.com
Submitted on: 2/6/2011

Comments:

I hope this will be the time when the state toughens up our trespass laws. No one has any regard for private property and yet if they get hurt being there legally they blame the land owner or lessee.