



LATE

Committee: Committee on Economic Development and Tourism
Hearing Date/Time: Wednesday, February 9, 2011, 1:15 p.m.
Place: Conference Room 016
Re: Testimony of the ACLU of Hawaii in Opposition to S.B. 1207, Relating to Trespass

Dear Chair Fukunaga, Vice Chair Wakai and Members of the Committee on Economic Development and Tourism:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in opposition to S.B. 1207, Relating to Trespass, which purports to allow for civil liability against publishers of visitor guides if readers who trespass on private property are injured or killed.

S.B. 1207 poses a litany of constitutional issues. The subject material, visitor guides and visitor guide websites are protected by the First Amendment. Moreover, it is well-settled that state tort laws cannot circumvent or override the protections afforded by the First Amendment. *See, e.g., New York Times v. Sullivan, 376 U.S. 254, 265 (1964).* State tort laws, which seek to impose civil liability on publications, have a substantial chilling effect on the publishers and distributors of such material. Accordingly, the ACLU opposes S.B. 1207.

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 45 years.

Thank you for this opportunity to testify.

Sincerely,

Daniel M. Gluck
Senior Staff Attorney
ACLU of Hawaii

American Civil Liberties Union of Hawaii
P.O. Box 3410
Honolulu, Hawaii 96801
T: 808.522-5900
F: 808.522-5909
E: office@acluhawaii.org
www.acluhawaii.org



LATE

February 7, 2011

Honorable Chair Fukunaga
Vice Chair Wakai
Committee on Economic
Development and Technology
Hawaii State Capitol
Honolulu, HI 96813

Re: SB 1207 Relating to Trespass

Dear Chair Fukunaga, Vice Chair Wakai and Members of the Committee:

Mahalo nui loa for allowing SB 1207 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 refuses 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 this area 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 Kauai 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.

KAUAI

HAWAII'S ISLAND OF DISCOVERY

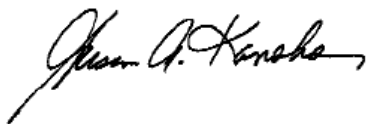
Testimony for SB 1207
February 7, 2011
Page Two

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 know 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 SB 1207.

Aloha,

Sincerely,



Susan A. Kanoho
Executive Director
Kaua'i Visitors Bureau



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@hfbf.org

LATE

SENATE
COMMITTEE ON ECONOMIC DEVELOPMENT AND TECHNOLOGY

February 9, 2011
Room 16

Testimony

SB 1207 RELATING TO TRESPASS

Chair Fukunaga, Vice Chair Wakai, and Members of the Committee:

Hawaii Farm Bureau Federation, on behalf of our commercial farm and ranch families and organizations throughout the islands, is in **strong support** of SB 1207, holding authors of publications and websites liable for enticing readers to trespass where that activity causes them to suffer injury or death. In those cases, it would exempt property owners from liability.

Hawaii's farmers and ranchers have long 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 and places where other crimes are committed. To add insult to injury, current law states that we have a duty of care towards those who trespass on our fields and ranges. Farmers and ranchers should not be held responsible for accidents incurred as a result of being enticed to trespass by irresponsible publishers.

Many of our farm and ranch lands are included in articles in travel magazines, newspapers, and on the web. After seeing the beautiful photographs, people naturally want to visit the islands. We have no complaints about good publicity. However, readers should not be encouraged to trespass. The intent of this measure is prevent further tragic deaths and injuries; to make sure that the authors do not entice readers to trespass by making light of property owners' attempts to keep the public out with fencing, signs, and other means. We have seen publications that **specifically tell readers to ignore "no trespass" or "private property" signs.**

We appreciate your consideration of this measure and are willing to work with you on clarifying language, if necessary. Thank you for this opportunity to provide our opinion on this important matter.

Jody Nakanelua

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 08, 2011 6:46 PM
To: EDTTestimony
Cc: robelloj@gmail.com
Subject: Testimony for SB1207 on 2/9/2011 1:15:00 PM

LATE

Testimony for EDT 2/9/2011 1:15:00 PM SB1207

Conference room: 016
Testifier position: support
Testifier will be present: No
Submitted by: James Robello
Organization: Individual
Address: Makawao HI
Phone:
E-mail: robelloj@gmail.com
Submitted on: 2/8/2011

Comments:
I SUPPORT SB 1207 RELATING TO TRESPASS.

I 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 formations, and should not be recommended to anyone. It is unfair to a visitor to be put into this situation.

It is unfair for a property owner to have to deal with trespassers.

Mahalo

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

LATE

TESTIMONY OF RUSSELL S. KOKUBUN
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE SENATE COMMITTEE
ON
ECONOMIC DEVELOPMENT AND TECHNOLOGY

WEDNESDAY, FEBRUARY 9, 2011
1:15 P.M.
ROOM 016

SENATE BILL NO. 1207
RELATING TO TRESPASS

Chairperson Fukunaga and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill No. 1207, Relating to Trespass. The purpose of this bill is to hold authors and publishers of visitor websites and publications liable to readers who suffer injury or death as a result of being enticed to trespass. It also exempts property owners from liability. The Department strongly supports this bill and respectfully requests that public lands be included in this bill. Our suggested changes are attached.

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.



Our sites are never open to the public and have the above mentioned signage in multiple locations. When asked by program personnel, "How did you find out about this place?", responses such as "We saw it in a magazine." or "We saw it online." are given. Our personnel have even been told that the hotel concierge told them about it. These publications and hotels must stop offering these activities to visitors. We respectfully ask that accountability be placed on the organizations that perpetuate these illegal actions.

Attachment

ATTACHMENT TO TESTIMONY OF RUSSELL S. KOKUBUN
SENATE BILL NO. 1207
RELATING TO TRESPASS

Suggested revisions to Senate Bill No. 1207 follow. Deleted text is bracketed; new text is underscored.

- Page 1
 - Line 3
 - “ ... remote private or public property”
 - Line 10
 - “ ... or activity, the [private] landowner”
- Page 2
 - Line 1
 - “Exempt [private] property owners”
 - Lines 12-13
 - “ ... on or through publicly or privately owned land;”
 - Lines 17-18
 - “ ... through private or publicly owned land.”
- Page 3
 - Line 14
 - “ ... on privately or publicly owned”
- Page 7
 - Lines 12-13
 - “ ... or unused public or private lands”
 - Line 19
 - “ ... or unused private or public land sufficient”
 - Lines 20-21
 - “ ... or “Government Property”, or “No Trespassing”.”



KAMEHAMEHA SCHOOLS

LATE

TESTIMONY TO THE SENATE COMMITTEE ON ECONOMIC DEVELOPMENT AND TECHNOLOGY

Hearing Date: Wednesday, February 9, 2011
1:15 p.m., Conference Room 016

Good Afternoon Chair Fukunaga and Vice Chair Wakai:

RE: Testimony in Support of Senate Bill No. 1207- Relating to Trespass

I am Kapu C. Smith, Senior Land Asset Manager for Kamehameha Schools' Kawaihoa Plantation in Waialua, Oahu. I am here to testify in support of SB 1207. 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, and damage our water systems.

In addition to these trespassers, we are now faced with those who are being led to our hiking trails, historic sites and other cultural resources by visitor websites and publications. In the "Hikers Guide to Oahu Revised Edition" the author provides detailed directions to access two trails on Kamehameha Schools' property which is located six miles above Haleiwa. In general, when the trespasser is asked why they thought they could access our land, they most often refer to a guidebook.

In light of this example and many others statewide, we hope that you will move SB 1207 and place liability on the right shoulders. Thank you.

Doris Lam

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 09, 2011 3:16 PM
To: EDTTestimony
Cc: ckawai@hawaii.edu
Subject: Testimony for SB1207 on 2/9/2011 1:15:00 PM

Testimony for EDT 2/9/2011 1:15:00 PM SB1207

LATE

Conference room: 016
Testifier position: oppose
Testifier will be present: No
Submitted by: Colins Kawai
Organization: Hawaii Book Publishers Association
Address: Honolulu, Hawaii
Phone:
E-mail: ckawai@hawaii.edu
Submitted on: 2/9/2011

Comments:

The Hawaii Book Publishers Association opposes this bill, SB1207, if only for its clear disregard of our First Amendment rights. Our members are law-abiding, upstanding citizens and businesses in this State, and this Bill would cause irreparably harm and hardship, if passed. Our recommendation is to go after those unreputable publishers, not our members. Our membership includes the University of Hawaii Press, Bishop Museum Press, Kamehameha Schools Publishing, Bess Press, Mutual Publishing, East-West Center, Island Heritage, and others. We have a longstanding history of book publishing in Hawaii, and this Bill could kill book publishing in Hawaii. I'm sure that this is not the intent of this Bill, but this will surely be the result of it.

Aloha,
Colins Kawai
Marketing Director, UH Press
President, Hawaii Book Publishers Association.

A BILL FOR AN ACT

RELATING TO TRESPASS.

LATE

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that visitor guide websites and visitor guide publications may encourage visitors to trespass onto private property to experience an attraction or activity. The representations made by these websites and guide publications put visitors at potential risk by describing attractions or activities without adequately explaining the inherent dangers associated with them, or that they are located on or require crossing private property, often resulting in serious injury or death to the visitor.

The legislature further finds that because of the publicity from and encouragement by visitor guide websites and visitor guide publications, the private landowner is unable to reasonably prevent trespassers from going on or through their land to get to the dangerous attraction or activity.

The purpose of this Act is to:

- (1) Hold authors and publishers of visitor guide websites and visitor guide publications liable to individuals who suffer injury or death as a result of being enticed to trespass; and

- (2) Hold authors and publishers of visitor guide websites and visitor guide publications liable to private property owners or legal occupiers of land and indemnify them from liability for trespassers' injury or death.

SECTION 2. Chapter 663, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§663- Visitor guide liability. (a) Any author or publisher of a visitor guide website or visitor guide publication shall be civilly liable for injury or death to a person if the:

- (1) Visitor guide website or visitor guide publication informs, encourages, invites, or attracts any person to enter, cross or remain on privately owned land; and

- (2) The person is injured or dies as a result of the person entering, crossing or remaining on privately owned land as a result of information or statements contained in the visitor guide website or visitor guide publication.

(b) The visitor guide website or visitor guide publication who is liable to any person pursuant to subsection (a) shall also be liable to defend and indemnify the owner or occupier of

private land for any liability that the owner may incur to such person described in subsection (a).

(c) As used in this section:

"Visitor guide publication" means any published book, pamphlet, magazine, handout, mailer, or advertisement, whether disseminated via hard copy or electronic distribution that provides information about a visitor destination, geographic destination, or natural attraction on privately owned land in the State.

"Visitor guide website" means any commercial travel:

- (1) Website;
- (2) Social media wireless communication;
- (3) Forum;
- (4) Twitter account; or
- (5) Blog;

that provides information about a visitor destination, geographic destination, or natural attraction on privately owned land in the State."

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

INTRODUCED BY: _____

Report Title:

Visitor Guide Publications; Websites; Liability

Description:

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; indemnifies property owners from liability.

UNIVERSITY OF HAWAI'I PRESS

2840 Kolowalu Street, Honolulu, Hawai'i 96822-1888

FAX: (808) 988-6052

www.uhpress.hawaii.edu

An Equal Opportunity/
Affirmative Action Institution

TELEPHONES (AREA code 808):

Director 956-8257

Business Office 956-8255

Editorial 956-8694

Design and Production 956-8275

Marketing 956-8697

East-West Express Books 956-8830

Journals 956-8833



February 15, 2011

The Honorable Carol Fukunaga, Chair
Committee on Economic Development and Technology
The Hawaii State Senate, Room 216
State Capitol
Honolulu, HI 96813

Dear Chair Fukunaga and Committee Members:

Re: SB 1207 and SB 1208

During recent public testimony on SB 1207 one of the presenters, Kapu Smith, Senior Land Asset Manager for Kamehameha Schools, referred to a University of Hawai'i Press guidebook as a blatant example of a publisher enticing hikers to trespass on KSBE property in order to reach the Kawainui trail hike and the Opaepa trail hike above Haleiwa. In my professional opinion Ms. Smith selected the wrong guidebook to present to your committee. She either failed to read the book carefully or simply chose to ignore the very specific disclaimers included in *The Hikers Guide to O'ahu, Revised Edition* regarding the KSBE property she manages.

Had Ms. Smith read the book carefully she would have understood that both the Kawainui (pg. 261) and Opaepa (pg. 267) hikes are treated by the author as conditional hikes with permission **required** from both KSBE and the Army. The author further qualifies public access to the hikes by stating that permission is given only to outdoor organizations, not individuals. The actual wording in the book is "Conditional; open only to outdoor organizations with permission."

The different hiking categories of public access (open, conditional, and closed) are fully explained on page xxiii in the book's Hike Categories section. For the conditional category, the author states: "You may do Conditional hikes subject to the terms required by the landowner. They usually include obtaining verbal or written permission. You may have to sign a liability waiver.... If you do not adhere to the landowner's conditions, you are trespassing."

UH Press (a state of Hawai'i entity) takes great pride in publishing books for the people of Hawai'i that provide a lens into the state's natural history and its natural beauty. All of the hikes in our book describe the plants, trees, birds, geology, history, and legends of the area. The author also goes to great lengths to highlight the dangers each hike presents, if any. His final disclaimer

warns the reader to not rely entirely on the book; to use their own judgment and common sense as well.

In closing, I believe your committee was misled regarding our book and I caution you not to make any judgment regarding SB 1207 based on Ms. Smith's UH Press' book waving testimony. However, based on Ms. Smith's displeasure, please be advised that the author plans to change his website description of the two hikes as closed hikes. We will do so as well when the book is revised.

As an aside I anticipate that, should SB 1207 and SB1208 become law, that I and the attorney general's staff will be spending a fair bit of time addressing frivolous lawsuits from book buyers who fail to follow the disclaimers published in our guidebooks. A sign of our times, I'm afraid.

Aloha,



William H. Hamilton
Director

cc: Senators Baker, Solomon, Slom, and Wakai