

STAND. COM. REP. NO. 938

Honolulu, Hawaii

March 4, 2011

RE: H.B. No. 548
H.D. 3

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Sixth State Legislature
Regular Session of 2011
State of Hawaii

Sir:

Your Committee on Judiciary, to which was referred H.B. No. 548, H.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO TRESPASS,"

begs leave to report as follows:

The purpose of this bill is to protect owners and occupiers of private or public lands that are not open to the public by:

- (1) Holding authors or publishers of visitor-guide websites or visitor guide publications who knowingly or negligently encourage or invite any person to enter or remain on lands that are not open to the public civilly liable for injury to or death of the person; and
- (2) Requiring the authors or publishers to defend and indemnify the owner or occupier of public or private land from any liability arising from injury to or death of the person.

The Department of Land and Natural Resources; Hawaii Tourism Authority; Hawaii Farm Bureau Federation; Hawaii Cattlemen's Council, Inc.; Grove Farm Company, Inc.; Kamehameha Schools; Land Use Research Foundation of Hawaii; and Big Island Farm Bureau testified in support of this measure. The American Civil Liberties Union of Hawaii; Hawaii Chapter of the Sierra Club; Association of American Publishers, Inc.; Media Coalition; Society

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of Professional Journalists; Wizard Publishing, Inc.; and several concerned individuals opposed this bill. The Hawaii Association for Justice commented on this measure.

Your Committee has examined local case law concerning guide book liability. Accordingly, your Committee has amended this measure by establishing that authors or publishers of visitor-guide websites or visitor-guide publications describing attractions have a duty to warn the public of dangerous conditions typical to the area, except that a publisher shall only have such a duty if the publisher participates as an author.

In addition, your Committee has defined "land in the State from which the public is excluded" to specify that the land in question must be either fenced or posted with "No Trespassing" signs. Your Committee has also added a Part II to the bill to create a task force to identify and assess lands on all islands that are or have been featured in visitor guides, which may pose a risk of serious injury or death if visited by tourists. Finally your Committee has changed the effective date to January 7, 2059, for part I of this bill, and January 7, 2060, for part II of this bill, to encourage further discussion.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 548, H.D. 2, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 548, H.D. 3.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary,


GILBERT KEITH-AGARAN, Chair



