

STAND. COM. REP. NO. 1498

Honolulu, Hawaii

April 8, 2011

RE: S.B. No. 1079
S.D. 2
H.D. 2

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 S.B. No. 1079, S.D. 2, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO LANDOWNER LIABILITY,"

begs leave to report as follows:

The purpose of this bill is to protect owners of agricultural or range land from the damage and potential liability created by trespassers by:

- (1) Establishing a rebuttable presumption that an owner of agricultural or range land owes no duty of care to trespassers for injury to, property damage, or death of a trespasser that occurs on agricultural or range land or to warn trespassers; provided that the landowner takes certain precautions; and
- (2) Expanding the trespass offense by applying it to cases where agricultural lands, at the time of entry, are fallow or have evidence of livestock-raising and establishing a criminal fine of up to \$10,000 for the trespass offense.

The Land Use Research Foundation of Hawaii, Hawaii Cattlemen's Association, Hawaii Aquaculture and Aquaponics Association, a Maui County Council member, and several concerned individuals testified in support of this measure. The Maui

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Cattlemen's Association, Hawaii Farm Bureau Federation, Kauai Farm Bureau, and several concerned individuals supported this bill with amendments. The Hawaii Agriculture Research Center, Kukaiau Ranch, Parker Ranch, Inc., and Hawaii Beef Producers supported the intent of this measure. Hawaii Association for Justice opposed this bill. The Department of the Attorney General, Department of Agriculture, Sierra Club - Hawaii Chapter, Kealaola LLC, Hawaii Cattlemen's Council, Inc., and a concerned individual commented on this bill.

Your Committee notes that under the State's common law, those entering a land owner's premises were classified as invitees, licensees, and trespassers and a property owner was required to exercise reasonable care according to the person's classification. Then, about 40 years ago, the Hawaii Supreme Court in *Pickard v. City and County of Honolulu* abolished the distinctions between classes of persons, stating that a landowner "has a duty to use reasonable care for the safety of all persons reasonably anticipated to be upon the premises, regardless of the legal status of the individual."

Your Committee also finds this broad duty fitting, because while the common and popular notion of "trespasser" is a person who enters the property of another with some bad or even criminal intent, the law actually defines trespasser more broadly by including individuals who may innocently wander onto private property that is unfenced and not otherwise marked as private property.

Your Committee heard testimony that urged changing more than four decades of settled law by passing an expansive bill that eliminated land owners duty for all agricultural lands of any size. Simultaneously, these testifiers supported the section of the bill which increases current penalties for criminal trespass in the second degree on agricultural land from a petty misdemeanor to a weighty penalty of \$10,000. However, proponents were not able to provide any supporting data about the number of lawsuits and other claims made by trespassers onto range lands or agricultural lands generally.

Your Committee has determined that this bill as amended aptly addresses testifiers concerns and represents a fair, equitable, and reasonable balance between a land owner's duties, rights, and responsibilities, and the rights of a trespasser if injury or death results due to grossly negligent or intentional conduct by the land owner. Allowing a limited suspension of a land owner's



current duty of care for range land in excess of four acres, for a five-year test period, is an appropriate modification, especially given the relative isolation and large size of most range lands.

Your Committee notes that problems with agricultural theft should be addressed by the enforcement of, and strengthening where necessary, the criminal laws rather than changing civil law standards in place for over 40 years requiring a "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."

Accordingly, your Committee has amended this bill by:


- (1) Applying the limited liability provisions to range land owners only, by deleting references to agricultural lands;
- (2) Modifying range land owner's responsibilities requiring that the land owner either has to fence, enclose, or secure the land; or post sufficient signs instead of mandating both;
- (3) Changing the required language on the posted signs from "Private Property" to "No Trespassing", and clarifying when signs are required;
- (4) Adding provisions so that range land owner shall not be exempted from liability if the owner knows of or should have reasonably anticipated the presence of children on the owner's land;
- (5) Deleting unnecessary definitions of "agricultural land" and "invited guest";
- (6) Changing the definition of "range land" from five acres to four acres;
- (7) Adding to the definition of "trespasser";
- (8) Deleting section 2 of this bill regarding criminal trespass provisions;
- (9) Requiring the Hawaii Farm Bureau Federation to report to the Legislature on the number of personal injury claims brought by trespassers against owners of crop lands;



- (10) Changing its effective date to January 1, 2012, to be repealed five years later; and
- (11) Making technical, nonsubstantive amendments for clarity, consistency, and style.

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 S.B. No. 1079, S.D. 2, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as S.B. No. 1079, S.D. 2, H.D. 2.

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



GILBERT KEITH-AGARAN, Chair



