



Hawaii Cattlemen's Council, Inc.

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HOUSE COMMITTEE ON JUDICIARY

Tuesday March 1, 2011, 2:00 p.m. Room #325

HB 1607 HD1 RELATING TO RANGE LAND LIABILITY. Limits range land owners' liability in cases of trespass or granted recreational use.

Chair Keith-Agaran, Vice Chair Rhoads 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** HB 1607 HD1.

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 and security issues.

Property damage, to livestock, damaged fences, stealing of agriculture products can be irreversible for the landowner or operator. 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 and operators. 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/land operator liability.

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.

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

**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII
ASSOCIATION FOR JUSTICE IN OPPOSITION TO H.B. NO. 1607, HD 1**

March 1, 2011

To: Chairman Gilbert Keith-Agaran and Members of the House Committee on Judiciary:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in OPPOSITION to H.B. No. 1607, HD 1.

The provisions in Section 2 of this bill on page 1 basically provide for immunity to an owner of range land as it provides that an owner of range land does not owe a duty of care toward a trespasser for injury occurring on range land which is defined in this bill. It states that an owner has no duty of care to keep the land safe or to warn of dangerous natural conditions to a trespasser. It then creates a rebuttable presumption that an owner is not liable to a trespasser for injury or death that occurs on range land. This bill focuses on what has been said to be a problem that ranchers and cattlemen are concerned about; that is, liability to trespassers.

However, 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, at a minimum, the proponents of this bill should at least provide the legislature with the information that is stated above before a major public policy decision is rendered.

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 depending upon where the land is located. .

Also, as background we want to stress 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.

It is also 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 fundamental change in public policy and I urge this committee to do a thorough analysis to consider the need for such legislation, and whether other measures are more appropriate. Thank you for the opportunity to testify in opposition to this bill.



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House Committee on Judiciary

March 1, 2011

2 pm
Room 325

HB 1607 HD1 RELATING TO RANGE LAND LIABILITY

Chair Keith-Agaran, Vice Chair Rhoads, and Members of the Committee,

Hawaii Farm Bureau, on behalf of our commercial farm and ranch families and organizations across the State, **strongly supports the intent of HB 1607 HD1 and respectfully requests that the same protections be extended to farm land.**

Both ranchers AND farmers in Hawaii need your help.

As recognized in the preamble of this bill, range lands need protection. Across the State, these lands are being used without permission from owners for hiking, hunting, dirt biking, and worse---illegal activities. Animals and equipment are stolen, property is vandalized, and livestock is endangered as a result of cut fences and broken gates which allow them to wander into the roadways, further endangering motorists. Our lands are used as a rubbish dump, a place to abuse alcohol and drugs and to commit other crimes.

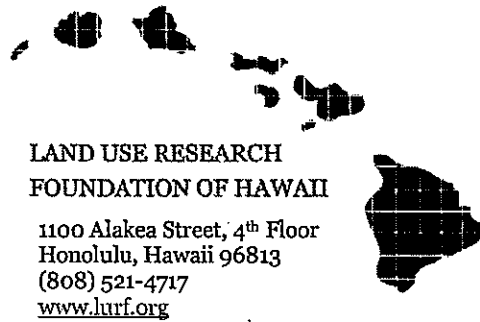
In addition, there are individuals who trespass, hurt themselves, and then threaten to sue for their injuries. Ranchers and farmers cannot afford to lose everything they work so hard to create, in litigation due to trespass. There is certainly no benefit provided to the farmer or rancher from these trespassers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

These illegal activities are not unique to what occurs at ranches.....it happens to farms too!

This bill provides that **only 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 or kill the trespasser).

We appreciate the recognition and agree that ranchers are experiencing hardship due to the activities of trespassers and we respectfully request that the no duty of care provisions in this bill also be extended to farmers with croplands either through this bill or another legislative vehicle.

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.



LAND USE RESEARCH
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March 1, 2011

Representative Gilbert S.C. Keith-Agaran, Chair and Representative Karl Rhoads, Vice Chair
House Committee on Judiciary

Tuesday, March 1, 2011 at 2:00 p.m. in CR 325

Support for, and Amendments to HB 1607, HD 1 Relating to Range Land Liability (Limits range land owners' liability in cases of trespass or granted recreational use.)

My name is Dave Arakawa, and I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources and public health and safety.

LURF appreciates the opportunity to provide testimony **in support of HB 1607, HD 1** and to offer an **amendment** of Section 708-814 (c) to include entering or remaining on agricultural lands that are **fallow** or have **visible presence of livestock** at the time of entry into the offense of second degree trespass (which is currently being proposed by HB 227, HD 1, also pending before this Committee), would work to strengthen this bill even further.

HB 1607, HD 1. This bill establishes that an owner of range land owes no duty of care to keep range land safe for entry or use by a trespasser, or to warn trespassers of dangerous natural conditions, range activities, or uses on said land. HB 1607, HD 1 further establishes a presumption that an owner of range land is not liable to a trespasser for injury, damage, or death occurring on such land, except where the owner is grossly negligent, willfully or wantonly disregards the safety of a trespasser, or intentionally causes injury, damage, or death to a trespasser. The bill also expands the limited liability protection of owners to those owners who allow recreational use of range land.

LURF's Position. This bill protects owners of range land, including those owners who allow recreational use of their land, from liability if a trespasser (as defined in Hawaii Revised Statutes [HRS], Section 708-814(c)) is injured, damaged, or dies while coming onto the property, unless the injury, damage or death is caused by the owner's intentional act, gross negligence, or willful or wanton conduct.

LURF believes that this bill represents a fair, equitable and reasonable balance between the landowner's duties, rights and responsibilities, and the rights of a trespasser if an injury or death results based on grossly negligent or intentional conduct by the landowner.

LURF further believes incorporation of the criminal trespass laws into the bill to define the term "trespasser" addresses concerns relating to inadvertent trespass, making the measure acceptable and beneficial, particularly to persons or entities that own or control agricultural land. These farmers and ranchers have continued to experience problems with trespass over the years, yet have been defenseless against claims by trespassers for incidents and injuries suffered on their farms and range lands; and have, in fact, had to protect trespassers from loss and injury despite their illegal entry.

Reference to the criteria for criminal trespass onto agricultural land which is contained in HRS Section 708-814(c) aids greatly in addressing the concerns of range land owners, and is strongly supported by LURF. An **amendment** of Section 708-814 (c) to include entering or remaining on agricultural lands that are **fallow** or have **visible presence of livestock** at the time of entry into the offense of second degree trespass (which is currently being proposed by HB 227, HD 1, also pending before this Committee), would work to strengthen this bill even further.

LURF is in **support of HB 1607, HD 1**, and respectfully urges your favorable consideration of **our proposed amendments**. Thank you for the opportunity to present testimony regarding this matter.