

**NEIL ABERCROMBIE**  
Governor



State of Hawaii  
**DEPARTMENT OF AGRICULTURE**  
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**RUSSELL S. KOKUBUN**  
Chairperson, Board of Agriculture

**JAMES J. NAKATANI**  
Deputy to the Chairperson

**TESTIMONY OF RUSSELL KOKUBUN  
CHAIRPERSON, BOARD OF AGRICULTURE**

**BEFORE THE HOUSE COMMITTEE ON AGRICULTURE  
FEBRUARY 11, 2011  
9:00 A.M.  
CONFERENCE ROOM 312**

**HOUSE BILL NO. 1607  
RELATING TO RANGE LAND LIABILITY**

Chairperson Tsuji and Members of the Committee:

Thank you for the opportunity to testify on House Bill 1607 relating to range land liability. The bill proposes to limit range land owners' liability in cases of trespass or granted recreational use. The Department supports this bill, particularly because it does not exclude public lands.

Ranchers manage large areas of land for grazing of livestock animals, many located in remote but beautiful natural areas that attract hikers, nature enthusiasts, and others, and proves difficult to constantly oversee. Incidents involving trespass injury pose financial liability to the ranchers which may amount to millions of dollars. This bill will provide additional protection to the range land owners.

Thank you for the opportunity to testify on this measure.



**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII  
ASSOCIATION FOR JUSTICE (HAJ) REGARDING H.B. NO. 1607**

February 11, 2011

To: Chairman Clift Tsuji and Vice Chairman Mark Hashem and Members of the House  
Committee on Agriculture:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the  
Hawaii Association for Justice (HAJ) regarding H.B. No. 1607.

The provisions in Section 2 of this bill on page 1 basically provide for a rebuttable  
presumption 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. 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 located

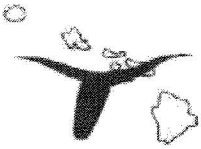
next to an elementary school, in contrast to owners of range land in sparsely populated rural ranching areas. This bill at least tries to narrow the scope of the impact of the possible change in public policy and legal concepts. The range land owner must meet a few conditions before the presumption is applicable.

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.

Also, it is 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 regarding this bill.



## **Hawaii Cattlemen's Council, Inc.**

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HOUSE COMMITTEE ON AGRICULTURE  
Friday February 11, 2011 9:00 a.m. Room 312

### **HB 1607 RELATING TO RANGE LAND LIABILITY.**

Limits range land owners' liability in cases of trespass or granted recreational use.

Chairman Tsuji, Vice Chair Hashem 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 with a few suggested changes.**

We strongly suggest that wherever it mentions "owner" in this bill, that you add "or operator", so that it reads (for example on page 1, line 13) (a) An owner or operator of range land owes no duty of care....". Of course, this is meant to protect a lessee who does not own the subject land. A definition for Operator would also have to be inserted.

We also believe this law should be afforded to all agricultural operations over 5 acres, not just range land.

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. 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, 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.

Food safety and food security 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 and security 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.

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 HB 1607 will create that.

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

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, February 09, 2011 8:49 PM  
**To:** AGRtestimony  
**Cc:**  
**Subject:** Testimony for HB1607 on 2/11/2011 9:00:00 AM

Testimony for AGR 2/11/2011 9:00:00 AM HB1607

Conference room: 312  
Testifier position: support  
Testifier will be present: No  
Submitted by: William G. Jacintho  
Organization: Maui Cattlemen's Association  
Address:  
Phone:  
E-mail:  
Submitted on: 2/9/2011

Comments:

We Respectfully prefer HB 1488 over this bill, as it addresses more trespass concerns that Agriculture land owners have.

Sincerely,  
William G. Jacintho  
Maui Cattlemen's Association, President



**Food Company Hawaii**  
1116 Whitmore Avenue • Wahiawa, Hawaii 96786

**HOUSE COMMITTEE ON AGRICULTURE**  
Friday February 11, 2011 9:00 a.m. Room 312

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

Chairman Tsuji, Vice Chair Hashem and Members of the Committee:

My name is Daniel Nellis and I am the Operations Director for Dole Food Company Hawaii. Dole grows pineapple, coffee, and cacao on our Oahu farm and also leases land to independent growers producing a variety of diversified crops and livestock.

Dole **strongly supports** HB 1607 and the suggested changes introduced by the testimony of the Hawaii Cattlemen's Council, i.e.,

- whenever the word "owner" is used add "or operator" to the sentence to protect lessees as well as owners
- include language to have this law cover all agricultural operations and not just range land.

Dole and our tenant farmers have experienced excessive costs related to trespass damage and removal of trespassers (approximately \$100,000 for Dole in 2010). The reduction of liability for landowners and agricultural operators intended by this bill can reduce the exposure to costs trespassers cause to farmers and ranchers.

Any legislative effort to prevent trespassing and the costs it creates to our agriculture industry are much appreciated. Stricter trespass laws and supported enforcement should be encouraged so that victims of trespass are better protected. Safe, secure farms in Hawaii can produce safe, affordable food for the people of Hawaii.

Thank you for the opportunity to provide testimony in favor of this important legislation.