

SB 1041

TESTIMONY

**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII
ASSOCIATION FOR JUSTICE (HAJ) REGARDING S.B. NO. 1041**

February 7, 2011

To: Chairman Clayton Hee and Members of the Senate Committee on Judiciary and Labor:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) regarding S.B. No. 1041.

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. The definition section of this bill injects another definition where the landowner is obligated to use reasonable care to keep the land safe.

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 if so, whether more specific and other measures are more appropriate.

Thank you for the opportunity to testify regarding this bill.

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, February 05, 2011 10:54 PM
To: JDLTestimony
Cc: jacinthow001@hawaii.rr.com
Subject: Testimony for SB1041 on 2/7/2011 10:00:00 AM

Testimony for JDL 2/7/2011 10:00:00 AM SB1041

Conference room: 016
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Testifier will be present: No
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Submitted on: 2/5/2011

Comments:

We respectfully prefer SB1079 over this bill, as it addresses more trespass concerns that Agriculture land owners have.

Sincerely,

William G. Jacintho
President MCA