



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-SIXTH LEGISLATURE, 2011**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 1079, S.D. 2, PROPOSED H.D. 2, RELATING TO TRESPASS.

**BEFORE THE:**

HOUSE COMMITTEE ON JUDICIARY

**DATE:** Tuesday, April 5, 2011      **TIME:** 2:00 p.m.

**LOCATION:** State Capitol, Room 325

**TESTIFIER(S):** WRITTEN TESTIMONY ONLY. For more information, call  
Lance M. Goto, Deputy Attorney General, at 586-1160.

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Chair Keith-Agaran and Members of the Committee:

The Department of the Attorney General provides the following comments regarding the criminal trespass provisions in section 2 of this bill.

The purpose of section 2 of this bill is to strengthen trespass provisions by amending the offense of criminal trespass in the second degree, section 708-814, Hawaii Revised Statutes, to also prohibit a person from entering or remaining unlawfully on agricultural lands that are fallow or have evidence of livestock-raising.

The bill amends section 708-814(1)(c)(iii), Hawaii Revised Statutes to read as follows regarding the unlawful entry on agricultural lands:

At the time of entry, are fallow or have a visible presence or evidence of livestock-raising, such as cattle, horses, water troughs, shelters, paddocks, or  
of a crop:

- (A) Under cultivation;
- (B) In the process of being harvested; or
- (C) That has been harvested.

We have some concern about the "livestock-raising" amendment, and recommend that it be deleted. This provision refers to agricultural land that is not fenced or enclosed, and

which does not have any visible signage to provide notice that the land is private property. The boundaries of the agricultural land are not clearly designated or readily apparent. The proposed amendment suggests that the presence or evidence of "livestock-raising," including the mere presence of livestock on open land, should provide sufficient notice that the land is private property that should not be entered.

The concerns are that:

- (1) The boundaries of the land may not be apparent;  
and
- (2) Livestock left on unfenced land can wander anywhere, including onto land belonging to another, and the criminal trespass offense should not be based on where an animal might wander.

We also have concerns about the term "fallow," which is not defined in the bill. The term "fallow" is defined in a dictionary as "plowed and left unseeded for a season or more; uncultivated; not in use; or inactive." Lands that are "fallow" could include lands that are simply not being used, and which might not provide a trespasser with any appearance or indication of being agricultural lands.

House Bill No. 227, H.D. 2, S.D. 1, which contains similar trespass provisions, includes the following definition:

"Fallow" means lands that are plowed but left unseeded for a time after successive crops.

Thank you for the opportunity to share our concerns.

Council Chair  
Danny A. Mateo

Vice-Chair  
Joseph Pontanilla

Council Members  
Gladys C. Baisa  
Robert Carroll  
Elle Cochran  
Donald G. Couch, Jr.  
G. Riki Hokama  
Michael P. Victorino  
Mike White



Director of Council Services  
Ken Fukuoka

**COUNTY COUNCIL**  
COUNTY OF MAUI  
200 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
[www.mauicounty.gov/council](http://www.mauicounty.gov/council)

April 5, 2011

TO: The Honorable Gilbert Keith-Agaran, Chair  
House Committee on Judiciary

FROM: Gladys C. Baisa  
Council Member

SUBJECT: **HEARING OF APRIL 5, 2011; TESTIMONY IN SUPPORT OF SB 1079 S.D. 2, H.D. 1, RELATING TO LANDOWNER LIABILITY**

Thank you for the opportunity to testify in support of this important measure. The purpose of this measure establishes a rebuttable presumption that an owner of agricultural or range land owes no duty of care, under certain conditions, toward a trespasser for injury suffered by the trespasser that occurs on agricultural or range land or to warn the trespasser of dangerous natural conditions or agricultural or range activities or uses. Clarifies the offense of criminal trespass in the second degree as it relates to agriculture and authorizes a fine for this offense.

The Maui County Council has not had the opportunity to take a formal position on this measure. Therefore, I am providing this testimony in my capacity as an individual member of the Maui County Council.

I support this measure with amendments for the following reasons:

1. Hawaii needs food and energy sustainability and should foster agricultural activities and resources by protecting all ranchers and farmers from unfair liability. The proposed bill only protects ranches over 5 acres. There is no justification for this; the majority of Hawaii's farms are small. The no duty care provisions should be extended to all farms and ranches.
2. Parents should be responsible for their children. Farms and ranches are inherently dangerous and cannot reasonably be made safe for any trespassers.
3. Trespassing, crop and equipment theft and vandalism have become a major problem. Almost 10% of net farm income is lost to trespassing thieves and vandals.
4. Agriculture also creates jobs, supports small businesses, and provides beautiful working landscapes and resource conservation. Agriculture benefits everyone and deserves protection.

For the foregoing reasons, I support this measure.

GCB:amm



## Hawaii Agriculture Research Center

*Administration: P.O. Box 100, Kunia, HI 96759*

*Ph: 808-621-1350/Fax: 808-621-1359*

a member of the

## Kunia Water Cooperative

### TESTIMONY BEFORE THE HOUSE COMMITTEE ON JUDICIARY

SENATE BILL 1079 SD2, HD1

RELATING TO LAND OWNER LIABILITY

April 5, 2011

Chairman Keith-Agaran and Members of your Committee:

My name is Stephanie Whalen. I am Executive Director of the Hawaii Agriculture Research Center (HARC). I am testifying today on behalf of the center and our research and support staff. I also am the President of the Kunia Water Cooperative and I am testifying on its behalf.

HARC **strongly supports the intent** of Senate Bill 1079 SD2, HD1 relating to landowner liability.

However, we strongly urge you to amend the bill to eliminate the 'over 5 acre' and young age limitations. This makes absolutely no sense. While in the past farms in Hawaii were plantation size, thousands of acres, the diversification as urged by public policy has resulted in farms from 2 acres to 100s of acres. **ALL FARMERS AND RANCHERS NEED THIS PROTECTION**-no duty of care provision.

It is hard to understand the age restriction. Parents, especially of younger age children, need to be fully responsible for their actions, whereabouts and behavior. Farms are not playgrounds and can not be made safe for young children. Why is policy being proposed that reduces or limits parental responsibility and puts it onto society?

Vandalism and theft are increasing problems for those responsible for feeding the rest of society. Passing this measure **with amendments to correct the age and size limitation** will greatly help Hawaii's ranchers and farmers **without costing the state any money**.

Thank you for the opportunity to testify in support of Hawaii's agricultural needs.

*Hawaii Agriculture Research Center*

-1-

*SB 1079, SD2, HD1*

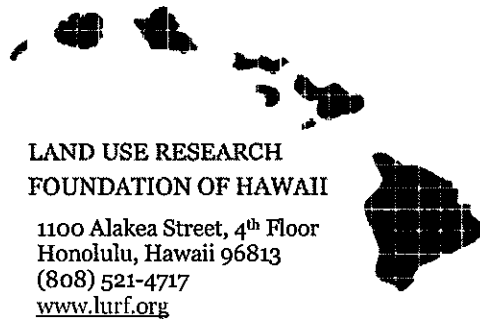
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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, April 04, 2011 7:44 AM  
**To:** JUDtestimony  
**Cc:** rodeomaui@aol.com  
**Subject:** Testimony for SB1079 on 4/5/2011 2:00:00 PM

Testimony for JUD 4/5/2011 2:00:00 PM SB1079

Conference room: 325  
Testifier position: support  
Testifier will be present: No  
Submitted by: Sharon Ann Freitas  
Organization: Individual  
Address:  
Phone:  
E-mail: [rodeomaui@aol.com](mailto:rodeomaui@aol.com)  
Submitted on: 4/4/2011

Comments:  
Please pass this Bill!



LAND USE RESEARCH  
FOUNDATION OF HAWAII

1100 Alakea Street, 4<sup>th</sup> Floor  
Honolulu, Hawaii 96813  
(808) 521-4717  
[www.lurf.org](http://www.lurf.org)

April 1, 2011

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

**Support of SB 1079, SD 2, HD 2 (Proposed). (Relating to Landowner Liability -  
Trespass; Owners of range land owe no duty of care toward trespassers.)**

**Tuesday, April 5, 2011 at 2:00 p.m. in CR 325**

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.

We appreciate the opportunity to provide our testimony **in support of SB 1079, SD 2, HD 2 (Proposed)**, and offer comments.

**SB 1079, SD 2, HD 2 (Proposed)**. This bill strengthens the trespass provisions of Hawaii Revised Statutes (HRS) Chapter 663 by adding a section protecting owners of range land from the effects of trespass on their property. Under this new section, owners of range land owe no duty of care to trespassers for injury, damage, or death suffered on the land, or to warn trespassers of dangerous natural conditions, or range activities or uses, provided that the land is fenced, enclosed or secured, and displays "Private Property; No Trespassing" signage. The liability of a range land owner shall not, however, be limited if said owner's acts are grossly negligent, or in willful or wanton disregard of the safety of a trespasser; or if the land owner intentionally causes injury, property damage, or death to a trespasser.

**LURF's Position**. This bill protects establishes that owners of range land exceeding five acres that is used primarily for range use (including appurtenant roadways, waterways, buildings, structures, and machinery or equipment attached to the land that is used in connection with range land activities) owe no duty of care, under certain conditions, toward trespassers for injury suffered on range land, or to warn trespassers of dangerous natural conditions or range activities or uses.

The bill, proposed to become effective January 1, 2012, and to sunset on December 31, 2017, also clarifies the offense of criminal trespass in the second degree as it relates to land that is fallow or has evidence of livestock-raising, and authorizes a \$10,000 fine for the offense.

LURF believes that this bill represents a fair, equitable and reasonable balance between the land owner'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 land owner.

LURF further believes incorporation of the criminal trespass laws into the bill to define the term "trespasser" resolves previous concerns relating to inadvertent trespass, making the measure acceptable and beneficial, particularly to owners and occupants of range land. Owners of range lands, including ranchers, have continually experienced problems with trespass, yet have been defenseless against claims by trespassers for incidents and injuries suffered on their 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), and the proposed amendment thereto to include fallow land or land upon which there may not be a visible presence, but only evidence of livestock-raising (such as cattle, horses, water troughs, shelters, paddocks), as a category of agricultural land to which the criminal trespass laws apply, aid greatly in addressing the concerns of range land owners, and is strongly supported by LURF.

Due to cost and aesthetic concerns of range land owners relating to fencing and signage, however, LURF supports and suggests deletion of the requirements that range lands must be fenced and display signs identifying the land as private property for purposes of determining whether criminal trespass has been committed. Many owners of large range parcels may be unable to provide signage at every entry point due to high costs and accessibility issues. LURF also supports the increase in fines of up to \$10,000 for violations of criminal trespass in the second degree.

Based on the above, LURF is in **support of SB 1079, SD 2, HD 2 (Proposed)** and respectfully urges your favorable consideration.

Thank you for the opportunity to present testimony regarding this matter.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, April 04, 2011 8:06 PM  
**To:** JUDtestimony  
**Cc:** kaufman@maui.net  
**Subject:** Testimony for SB1079 on 4/5/2011 2:00:00 PM

Testimony for JUD 4/5/2011 2:00:00 PM SB1079

Conference room: 325  
Testifier position: comments only  
Testifier will be present: No  
Submitted by: Alan Kaufman, DVM  
Organization: Individual  
Address:  
Phone:  
E-mail: [kaufman@maui.net](mailto:kaufman@maui.net)  
Submitted on: 4/4/2011

Comments:

While I strongly support this bill I strongly oppose the amendment that limits the bill to Ag lands of >5 acres. All Ag producers should be protected on all their parcels, not only on the largest properties. To provide protection to the larger land owners while rejecting the needs of the small operator is unfair. If a trespasser is on a 10 acre parcel and is injured by barbed wire while climbing a fence into a 4 acre parcel belonging to the same land owner, would there be liability? On either property the protection should be provided for the property owner, regardless of size.



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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, April 05, 2011 6:58 AM  
**To:** JUDtestimony  
**Cc:** karinguest@hawaii.rr.com  
**Subject:** Testimony for SB1079 on 4/5/2011 2:00:00 PM

Testimony for JUD 4/5/2011 2:00:00 PM SB1079

Conference room: 325  
Testifier position: support  
Testifier will be present: No  
Submitted by: Karin Guest  
Organization: Individual  
Address:  
Phone:  
E-mail: [karinguest@hawaii.rr.com](mailto:karinguest@hawaii.rr.com)  
Submitted on: 4/5/2011

Comments:

The no duty of care provisions should be extended to all farms and ranches. Parents should be responsible for their children. Farms and ranches are inherently dangerous and cannot reasonably be made safe for any trespassers. Trespassing, crop and equipment theft, and vandalism have become a major problem. Almost 10% of net farm income is lost to trespassing thieves and vandals. As farmers and ranchers, we grow food for you, the public. Agriculture also creates jobs, supports small businesses, and provides beautiful working landscapes and resource conservation. Agriculture benefits everyone and deserves protection.



# Sierra Club Hawai'i Chapter

PO Box 2577, Honolulu, HI 96803  
808.538.6616 hawaii.chapter@sierraclub.org

## HOUSE COMMITTEE ON JUDICIARY

April 5, 2011, 2:00 P.M.  
(Testimony is 1 page long)

### TESTIMONY COMMENTING ON SB 1079, SD2, HD1 WITH PROPOSED AMENDMENTS

Aloha Chair Keith-Agaran and Members of the Committee:

The Hawai'i Chapter of the Sierra Club, with 8,000 dues-paying members and supporters, offers the following comments to SB 1079 in order to reduce the possibility of unintended consequences. This measure establishes a duty of care towards trespassers and alters the definition of criminal trespass.

We sympathize with the plight of private landowners with true criminal trespass and hope the following comments can help enact a better bill.

We express concern over the looseness of the definition of "at least one sign." Page 1, lines 14-16; page 5, lines 17-20. Some parcels are hundreds of acres in size. Hikers may unintentionally cross over into private property and then bear the sole risk of injuries caused by negligence of the property owner.

We suggest removing subparagraph (2). While the obligation to fence, enclose or secure in a manner to exclude trespassers places a greater obligation upon private landowners, it appears most range land would already take these measures. In the alternative, some express sign requirement must be included, such as requiring a sign every 50 feet along the property boundary.

This measure also fails to expressly recognize the right of native Hawaiians to exercise traditional and customary rights. To prevent ambiguity, we suggest including language specifically recognizing these rights. Otherwise, the proposed amendments may be misconstrued as a legislative attempt to overturn the rights established via the court system.

Mahalo for the opportunity to testify.

# Kauai County Farm Bureau

Affiliated with Hawaii Farm Bureau Federation

P.O. Box 3895 • Lihue HI 96766

808-337-9944 (phone/fax) 808-652-3217 (cell)

[kcfb@hawaiiantel.net](mailto:kcfb@hawaiiantel.net)

***The Voice of Kauai's Agriculture***



April 4, 2011

ATTN: House Committee on Judiciary

RE: SB1079 SD2 HD2 Relating to Trespassing, Liability  
Testimony of Kauai County Farm Bureau in SUPPORT with amendments

HEARING DATE: April 4, 2011 – Committee on Judiciary, Room 325, 2:00pm

Kauai County Farm Bureau on behalf of our member farm and ranch families, and affiliated with Hawaii Farm Bureau Federation, **requests your support of SB1079 SD2 HD2 with amendments.**

We strongly support the intent of this bill but respectfully request an amendment to ensure that ALL ranchers AND farmers are protected from unfair liability. The proposed bill only protects ranches over 5 acres. The majority of Hawaii's farms are small. The no duty of care provisions should be extended to all farms and ranches.

It is a stated goal of our government to work together to provide for a sustainable and prosperous future for our state and its diverse communities, with greater food security. Protecting our farms and ranches from liability and ag theft relating to trespassing is an important component to protecting agriculture and conveys its importance to our public. Agriculture grows food for the public, creates jobs, supports small businesses and provides beautiful working landscapes and resource conservation.

At the same time, trespassing, crop and equipment theft, and vandalism have become a major problem. Farmers and ranchers need and deserve the law's protection from trespassers and liability situations that arise from trespassing.

Ag theft and trespassing has been identified as a top shared priority across agricultural commodities on Kauai. The Kauai County Farm Bureau Commodity Groups Committee currently includes members of Kauai County Farm Bureau, Kauai Cattleman's Association, Kauai Taro Growers Association, Kauai Landscape Industry Council, Kauai Coffee growers, Hawaii Tropical Fruit Growers, Hawaii Crop Improvement Association and Hawaii Tropical Flower & Foliage Association/Hawaii Floriculture & Nursery Association. The Committee works closely in partnership with Government Affairs to gather input on specific commodity needs and identify shared Kauai issues of which ag theft and trespassing is a shared concern.

Please lend your support to SB1079 SD2 HD2 with amendments. Mahalo for your consideration.

Sincerely,

Roy Oyama  
President – Kauai County Farm Bureau  
[Oyama\\_farm@yahoo.com](mailto:Oyama_farm@yahoo.com)

CC: Melissa McFerrin  
Executive Administrator – Kauai County Farm Bureau  
[kcfb@hawaiiantel.net](mailto:kcfb@hawaiiantel.net)

# MAUI CATTLEMEN'S ASSOCIATION

*Maui Cattlemen's  
Association*

*PO Box 473*

*Kula, HI 96790*

*Board of Directors  
and Officers*

*Brendan  
Balthazar*

*Harry Cambra*

*Alex Franco*

*Greg Friel*

*Jimmy Gomes*

*William G. Jacintho*

*John Kim*

*Mike Murakami*

*Amber Starr*

*Toni Thompson*

*Sustaining  
ranching  
communities in  
Hawaii*

## TESTIMONY

April 4, 2011

Submitted via email: [JDLTestimony@capitol.hawaii.gov](mailto:JDLTestimony@capitol.hawaii.gov)

FROM: Maui Cattlemen's Association

TO: House of Representatives Committee on Judiciary

HEARING DATE: Tuesday, April 5, 2011

HEARING TIME: 2:00 PM Conference Room 325, State Capitol

MEASURE: SB 1079, SD2, HD1

COMMITTEE ON JUDICIARY

Rep. Gilbert S. C. Keith-Agaran, Chair

Rep. Karl Rhoads, Vice Chair

The Maui Cattlemen's Association is a non-profit organization representing small and large livestock producers in Maui County.

Thank you for introducing a bill that places no duty of care requirement on landowners toward trespassers and authorize fines for the offence of criminal trespass. **We originally support SB 1079, however, are having lots of problems with supporting all of the added language in the now current SB 1079, SD2, HD1. The original intent of introducing the Trespass Bill, was to protect farms and ranches from disrespectful, bullying Trespassers.**

Leaving out cropland is not good, because trespass leads to theft, and often times, crop people have bigger theft problems than livestock.

Leaving out 5 acres or less size ag property is also not good, because once again the small guy and the family farm, who economically holds up the industry, is left hanging on the pigs tail. I believe we are looking at over 85% of the farmers in the industry.

Limiting the liability is again bad. It screams out that landowners are responsible for little children under 12 years old. Parents/Guardians of children shall be responsible for their own children. Parents of children caught on private property should be reported to CPS and charged with negligence.

Signs are a huge problem both at the property, and in court. Trespassers break them down almost as fast as the owner can put them up. These signs are constantly being replaced, believe me, I've been there over and over, and they are not cheap. Trespassers will deny seeing any sign, and if they are standing on it, will say it wasn't them. In addition, imagine how awful the Islands would look with Private Property

signs along every highway and roadway.

Fencing is also an issue, as livestock fences are designed to contain livestock, and not necessarily trespassers. Even bolted homes and home fences, designed to keep trespassers out, do not keep the eager trespassers off the property. We would all need solid prison fences, or ten-foot solid walls around our property, in order to consider it “fenced, enclosed, or secured in a manner designed to exclude trespassers”. This is not a feasible practice, nor would it appeal to the community and our tropical paradise.

**The Agriculture Industry is in dire need of support if it has any chance of staying alive. Hawaii today, more than ever, needs Agriculture for sustainability. Sustainability has been the biggest movement most recently, and Legislative Bills such as this, break down the ability to move forward with our statewide goals. We need our House of Representatives and Senators to embrace the industry and fully understand and support it, for the benefit of everyone. It is their fiduciary responsibility, to see that others do not destroy this goal.**

The \$10,000 is great, but none of it goes into the landowner’s pocket....

Statistics show, it takes a total of 9.5 hours per police officer to respond, investigate, and arrest a trespasser. This includes court appearance time on a simple case. In more difficult cases, more time will be needed. I don’t know how many officers are involved in a trespass case, but from my experience, there is a minimum of two officers that respond to most cases. There have been times that up to four police officers respond to a trespass case. In addition, to the officers involved in a trespass case, supervisors and other staff members are involved in the procedure.

If a case goes to trial, it takes a Prosecutor 14 hours to prepare and go to court. Also involved in a court case are Court staff members, a Judge, and maybe even a Jury. As I have pointed out, it takes a lot of time and people to work on a trespass case. Not to mention, the time involved for the property owner and staff, and the work that needs to be made up, because of time lost and day to day delays that trespassers can cause by being on property. \$10,000.00 may not be enough to cover a trespass case, but at least it’s better than the current \$1,000 fine. This increase could also work as a deterrent for trespassers. The way the current law is, these people just laugh at farmers and ranchers.

Here’s a list of some actual actions of what Trespassers do to ranchers and their property. None of this is made up. These are actual deeds.

**Trespassers:**

They cut our gate chains and put their lock on our gates, yes they do this quite often.

Leave gates open.

Mixed up animals, and it takes hours and sometimes days to reorganize the herd of cattle.

Animals get out on road and causes public and police hazards, and liability for landowners.

Cut your fences.

Animals come out and create a community problem and hazards. It’s so bad in areas you have to give up the pasture.

Trespassers go in and vandalize the area

They ride motorcycles tearing up the place. This creates a liability for rancher.

They steal from your property. Livestock, Supplies, Equipment, Generators, Saws, Tools, etc.

Poach on your property.

Have weapons

Some are big guys

Day or night shooting, causing danger to community and residents.

Go mostly for game – deer, pigs, mostly.

Sometimes go for livestock kills.

Creates a public hazard, and hazard to the owner, workers, and other livestock in area.

We are not trained in apprehending criminals

Reversing the charges on us.

Want to charge us for holding them against their will. Many ranches are in remote areas. Due to this situation, police response is not as quick as close areas. Ranchers have to hold the trespasser there till the police arrive. Trespassers, especially armed ones get antsy, and it makes it uncomfortable for both parties.

Water destruction.

They poison the water troughs.

They steal our water pipes, we buy and install new ones, and they steal them again.

They cut into our pipes and take water for their mobile tanks.

Trespassers connect hoses from our water lines for their Pakalolo

Drugs

Trespassers do drug sale transactions on rancher's property. They jet ski into ocean bays with delivery

At times, trespassers are high on drugs, and we have to deal with them.

Hikers

They get lost, get tired, some in pain, and need help off the property.

Harass livestock by presence. Some have dogs, and lots can go wrong with that.

Pick mushroom

Food safety compliances: Issues we have had to deal with in the past.

Beef measles – miocities from human defecation on property. Carcasses have to be destroyed after producing the animal for market. What a waste and lost of income.

Neospora caninum, caused from dogs defecating on the property. Causes problems such as stillborn and early death in calves.

Auto Accidents

Cars into fences

The fence gets trashed for many feet. At times 30-50 feet.

The car gets towed and the fence stays open.

The car doesn't get towed, rancher closes fence

Owner tows car out breaking fence, and leaves it open. So much can go wrong.

Dumping

They dump their trash by the truckloads, and more truckloads, including baby diapers, termite lumber, and landscape trash. They especially like it where there are turns in the roadways.

At times they dump on top of the fence, especially if the landowner asked them not to dump in the area.

They dump dead animal carcasses including pigs, dogs, cats, deer, and others. Stinky, stinky, stinky, and is a health issue.

They dump cars, and the landowner has to deal with that, and pay for the towing themselves. Many times the cars are stolen. This ties up the police time again. The landowner might locate the car owner and collect the tow fee, but there is no guarantee. The police will not deal with that issue. Personally, we once asked a tow truck with a car ready to dump the car near our property, not to consider dumping the car, and to take it to the proper place. When we came to check on the property the next day, the car was through the fence, and through the next fence. We had a lot more work than we bargained for.

Squatting on the land

They set up make shift home sites on private property

Many times it becomes a health issue with bathroom and final clean up situations

Evicting the people is not very easy; it can be a lengthy process

Evictions can be very emotional

Evictions take up police time if people don't cooperate

Squatters leave back lots of rubbish, passing on the burden and cost to clean up the area

They sometimes retaliate back on the owner

They also return at times, or find another location near by

Many times there are drugs involved

After all this trespass issues, and more not mentioned, we should not be responsible for such people that trespass and mistreat us, our property, our animals, or our employees.

Thank you for the opportunity to provide comment on this Senate Bill. As you can see, this bill is very important for the Agriculture industry. **Please support Senate Bill 1079, without the added sections that will hurt farmers and ranchers. As I said earlier, the original intent of introducing the Trespass Bill, was to protect farms and ranches from disrespectful, bullying Trespassers.**

You may reach the Maui Cattlemen's Association through the address provided above.

Sincerely,

William Jacintho, President

Amber Starr, Vice President

Kaupo Ranch Ltd.  
35 Kapuahi Street  
Makawao HI 96768

TESTIOMNY

April 5, 2011,  
Submitted via email: EDTTestimony @ Capital. Hawaii.gov

FROM: Kaupo Ranch Ltd.

TO: HOUSE COMMITTEE ON JUDICIARY

Representative Gilbert Keith - Agaran, Chairman  
Representative Karl Rhoads, Vice Chairman

Hearing Date: Tuesday, April 5, 2011

Hearing Time: 2:00 p.m., State Capital Room 325

MEASURE: SB 1079 SD2 HD2 RELATED to LANDOWNER LIABILITY

We SUPPORT SB 1079 SD2 HD2 RELATING TO LANDOWNER LIABILITY WITH AMENDMENTS TO INCLUDE ALL FARMERS AND RANCHES, NOT JUST RANCHES OVER 5 ACRES.

My name is Alex Franco I manage Kaupo Ranch Ltd. and is the Vice President of the Hawaii Cattlemen's Council.

Small farmers and ranchers play a major role in the production and marketing of agricultural products in Hawaii to exclude them because they farm on less than five acres would be unreasonable. We must include all farmers and ranchers regardless of the size of their operation. Many young farmers as well as ranchers start out with smaller operations and gradually expanded their operations as they build more experience, capital, and market. We also have older operators who choose to retire by reducing the size of their farms to supplement their retirement income and remain active. All farmers and ranchers whether farming on small or large acreages need to have the same protection under this trespass bill.

Please consider this amendment to SB 1079 SD2 HD2. I thank you for this opportunity to offer my written testimony.

Sincerely,

Alex Franco  
Kaupo Ranch Ltd.





THE HOUSE  
THE TWENTY-SIXTH LEGISLATURE  
REGULAR SESSION OF 2011

JUDICIARY COMMITTEE  
Representative Gilbert S.C. Keith-Agaran, Chair  
Representative Karl Rhoads, Vice Chair

DATE: Tuesday, April 5, 2011

TIME: 2:00 PM

PLACE: House Conference Room 325, State Capitol  
415 South Beretania Street

RE: Testimony in Strong Support of SB1079 SD2 HD2 - Relating to Landowner Liability, with essential amendments

Aloha Chair Keith-Agaran, Vice Chair Rhoads, and Committee Members,

The Hawaii Aquaculture and Aquaponics Association (HAAA), representing aquaculture and aquaponics producers statewide, supports SB1079 SD2 HD2 which could help discourage would-be trespasser from entering farms and ranches, and could limit a farmers and ranchers liability from trespassers to injure themselves. However, the HAAA would urge the amendment of the current wording of this bill to cover both the landowner and tenant, as it is typically the tenant farmer that bears the liability burden. We would also urge that the bill be amended to cover all forms and sizes of agriculture, including aquaculture, and not be limited solely to ranching of five acres or more as currently worded.

Trespass, vandalism, and theft are a continuing and growing problem for Hawaii's agricultural community and it is time that this matter be taken seriously. Vandalism and theft are preceded by trespass, both as a preliminary scoping activity and in the process of entering a farm to commit vandalism and theft. We need common sense to finally prevail to provide our farmers and ranchers the protection the need and deserve. This must happen if the Legislature and community are serious about supporting sustainable agriculture and increasing food security. If farmers and ranchers continue to loose ground in this matter, they will cease to farm. This bill has the potential to be a step in the right direction but the requested amendments are required to have this legislation benefit the broader agricultural community. Thank you for the opportunity to testify.

Sincerely,  
Ronald P. Weidenbach, HAAA President

**Puu Kane Farms LLC**  
P O Box 1904  
**Wailuku, HI 96793**

House Committee on Judiciary  
April 5, 2011  
**SB 1079, SD2, HD2**  
**Relating to Landowner Liability**

**Testimony in Support of SB 1079, SD2, Proposed HD2, WITH AMENDMENTS to include all of agriculture, not just some ranches, in the no duty of care section**

Aloha Chairman Agaran and fellow committee members:

**My name is Wes Nohara. I am the owner of a small organic pineapple farm business on the Island of Maui.** I am testifying in support of SB 1079. In fact I would encourage stiffer penalties for those who trespass onto farms and ranches. Farming is an extremely tough business. We hear about how important agriculture is to our Hawaii economy, open green space, rural lifestyle, etc... but we farmers are being hit by multiple issues, such as invasive species (pest), drought, land availability and competing uses, higher fuel costs, cheap imports, trespass (liability) and theft.

Some things are beyond our control, but trespassing and crop theft is something we need to address immediately. People who come onto the farms and ranches increase our liability. Each year I am forced to carry thousands of dollars in liability insurance. At the same time we see people on the farm who think it is their right to be there. However, many come back when we are not there and damage our property and steal our equipment and crops. These thieves and vandals know exactly where our crops are and when we are not there. The reason they know is they are coming on property and scouting our operations and crops.

In the past 3 weeks, my gates have been cut 4 times. Thieves stole most of my fruit and when we came in there were very little fruit for our customers. Yet the stolen fruit is being sold to small vendors who buy these fruit at cheaper prices and compete directly with us. Worse yet, the thieves probably did not pay taxes on the fruit they stole.

Last year, we worked really hard but still lost money. This year we hope to break even. Right now I am experiencing a serious negative cash flow and it hurts to know people are coming on property, stealing our crops and damaging our property. Currently I am seeking a \$100,000 loan to help cover my expenses. I don't know how much longer I can withstand these types of illegal activities and keep my business running. Add to this the potential of a lawsuit from a trespasser who hurts himself, and I will be forced to stop farming.

If someone was to break the lock and enter someone's store (or home) while it was closed for business, it would be considered a serious crime. This would be true whether they stole something or not. Why is it not equally serious when someone breaks in and enters a farm and steals their crop? It seems that many people don't see farms and ranches as legitimate businesses and thus treat it as if it is not as important.

Your vote and support to help curb agricultural theft and trespassing is much needed, along with protection for all farmers against liability for trespassers' injuries. I ask for your support. Thank you for the opportunity to submit testimony.

Wesley M. Nohara



## Hawaii Cattlemen's Council, Inc.

P O Box 437199 Kamuela HI 96743  
Phone (808) 885-5599 • Fax (808) 887-1607  
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### HOUSE COMMITTEE ON JUDICIARY Tuesday April 5, 2011 2:00 p.m. Room 325 **SB 1079 SD2 HD1 RELATING TO LANDOWNER LIABILITY**

Chairman Agaran, Vice Chairman 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 **supports SB 1079 SD2 HD1. We support Proposed H.D. 2 but have a number of concerns with this draft.**

We are in support of Section 2 of Proposed H.D. 2, however, in section 1 we have several concerns.

Page one includes the following: “(1) Is fenced, enclosed, or secured in a manner designed to exclude trespassers; and”. Please note that when range land is fenced, it is fenced to keep livestock in, not trespassers out. The fence should serve as notice that trespassers are not welcome, but cannot be expected to keep people out. The next paragraph deals with signage. We have told this legislature repeatedly that when we do post signs, trespassers and vandals remove the signs, or simply say they never saw the sign. It would be impossible to enforce the law if you include this language: “Where an owner knows or reasonably should know of the presence of trespassers in an area or areas of range land, a sign or signs sufficient to give notice shall be placed at such area or areas”. We may post many signs, but please be assured that they will be ripped off by the same people who then proceed to trespass and later say they never saw a sign.

Finally, this bill and other bills introduced this session proposed to protect not just range land, but all farm lands, large and small. While large ranchers with massive spreads deserve protection from trespasser liability, do the far many more small farmers and ranchers deserve less protection? Some have said it is easier for a rancher to keep his eye on a small ranch or farm, but please realize that rancher or farmer may not live on that property or be at that property all of that time. Must they sit on their porch with a shotgun 24/7 to protect their private property? Do homeowners with small homes deserve less protection than those with massive estates? In the news recently there have been a number of trespass crimes on small farms, including the Taro project and two papaya farms. We really need your help on all size agricultural properties, and for farms as well as ranches.

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 SB 1079 SD2 HD1 will create that, but proposed H.D. 2 gives us several concerns as mentioned above.

Ultimately, you as legislators will need to decide if you want to help protect the law abiding Farmers and Ranchers of this State who feed our people, OR the criminals who intentionally trespass on our properties often to commit crimes OR the folks who have no respect for private property rights and want farmers and ranchers to pay when they get hurt trespassing. This bill is about personal responsibility and protection for the agriculture that Hawaii says it wants to help. Due to the economy, the drought, insect and disease pests, and labor costs, many farms are currently in danger of closing. One lawsuit can tip the scale. We have come to you year after year to tell you of our problems and many legislators agree they want to help us, but year after year, when the end of session rolls around we got NOTHING. We need your help!

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:** Monday, April 04, 2011 11:33 AM  
**To:** JUDtestimony  
**Cc:** pepe@greenwellfarms.com  
**Subject:** Testimony for SB1079 on 4/5/2011 2:00:00 PM

Testimony for JUD 4/5/2011 2:00:00 PM SB1079

Conference room: 325  
Testifier position: support  
Testifier will be present: No  
Submitted by: PePe Miranda  
Organization: Individual  
Address:  
Phone:  
E-mail: [pepe@greenwellfarms.com](mailto:pepe@greenwellfarms.com)  
Submitted on: 4/4/2011

Comments:

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, April 04, 2011 12:46 PM  
**To:** JUDtestimony  
**Cc:** amber@hanaranch.net  
**Subject:** Testimony for SB1079 on 4/5/2011 2:00:00 PM

Testimony for JUD 4/5/2011 2:00:00 PM SB1079

Conference room: 325  
Testifier position: support  
Testifier will be present: No  
Submitted by: Amber Starr  
Organization:  
Address:  
Phone:  
E-mail: [amber@hanaranch.net](mailto:amber@hanaranch.net)  
Submitted on: 4/4/2011

Comments:

I strongly support the intent of the bill but respectfully request amendments:

- Hawaii needs food and energy sustainability and should foster agricultural activities and resources by protecting ALL ranchers AND farmers from unfair liability. The proposed bill only protects ranches over 5 acres. There is no justification for this; the majority of Hawaii's farms are small. The no duty of care provisions should be extended to all farms and ranches.
- Parents should be responsible for their children. Farms and ranches are inherently dangerous and cannot reasonably be made safe for any trespassers.
- Trespassing, crop and equipment theft, and vandalism have become a major problem. Almost 10% of net farm income is lost to trespassing thieves and vandals.
- As farmers and ranchers, we grow food the public. Agriculture also creates jobs, supports small businesses, and provides beautiful working landscapes and resource conservation. Agriculture benefits everyone and deserves protection.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, April 04, 2011 1:01 PM  
**To:** JUDtestimony  
**Cc:** djr@teamdeluz.com  
**Subject:** Testimony for SB1079 on 4/5/2011 2:00:00 PM

Testimony for JUD 4/5/2011 2:00:00 PM SB1079

Conference room: 325  
Testifier position: support  
Testifier will be present: No  
Submitted by: David S. De Luz, Jr.  
Organization: Kukaiau Ranch and Hawaii Beef Producers  
Address:  
Phone:  
E-mail: [djr@teamdeluz.com](mailto:djr@teamdeluz.com)  
Submitted on: 4/4/2011

Comments:

I personally, in additon to our organizations, Kukaiau Ranch and Hawaii Beef Producers STRONG SUPPORT the intent of this bill. We would appreciate if you would please consider amendments to extend the jurisdiction to include ALL farms and ranches. In additon we feel that parents should be responsible for their childer and their actions. We have had numerous occasions that our fences have been cut and people driving ATV's and other off terrain type vehicles in our unused water resivors that have experienced accidents, both physical and property. We also had at lease 1 fire in the last year that was suspect as well. Our personal philosphy is to grow and process food for local consumption, its already VERY difficult to run a business and stay in business in this state. This bill at least addresses the potentil liability and hopefully you will consider these amendments to assist is in protecting our crops/herds, property and put ther responisbility on the TRRESSPASSERS! This bill is a stong effort/vocie in this direction and I respectfully ask your support and appreciate the oppurtunity to offer my testimony.

David S. De Luz, Jr.  
808-895-4284

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, April 04, 2011 2:03 PM  
**To:** JUDtestimony  
**Cc:** mgalimba@kuahiwiranch.com  
**Subject:** Testimony for SB1079 on 4/5/2011 2:00:00 PM

Testimony for JUD 4/5/2011 2:00:00 PM SB1079

Conference room: 325  
Testifier position: support  
Testifier will be present: No  
Submitted by: Michelle Galimba  
Organization: Hawaii Cattlemen's Association  
Address:  
Phone:  
E-mail: [mgalimba@kuahiwiranch.com](mailto:mgalimba@kuahiwiranch.com)  
Submitted on: 4/4/2011

Comments:



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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, April 04, 2011 2:46 PM  
**To:** JUDtestimony  
**Cc:** makatz@kealaola.com  
**Subject:** Testimony for SB1079 on 4/5/2011 2:00:00 PM

Testimony for JUD 4/5/2011 2:00:00 PM SB1079

Conference room: 325  
Testifier position: comments only  
Testifier will be present: No  
Submitted by: Michael Katz  
Organization: Kealaola LLC  
Address:  
Phone:  
E-mail: [makatz@kealaola.com](mailto:makatz@kealaola.com)  
Submitted on: 4/4/2011

Comments:

As a small farmer, trespassing is always a concern. We need this bill to be MODIFIED to provide the same support to small farms as large farms. I can understand the issue of not applying this to residential property but if a farm has a GET license, then it is operating as a commercial entity and deserves this protection.

PLEASE MODIFY this bill accordingly, then pass it!

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, April 04, 2011 3:43 PM  
**To:** JUDtestimony  
**Cc:** fujitanid002@hawaii.rr.com  
**Subject:** Testimony for SB1079 on 4/5/2011 2:00:00 PM

Testimony for JUD 4/5/2011 2:00:00 PM SB1079

Conference room: 325  
Testifier position: support  
Testifier will be present: No  
Submitted by: Donald S. Fujitani  
Organization: Individual  
Address:  
Phone:  
E-mail: [fujitanid002@hawaii.rr.com](mailto:fujitanid002@hawaii.rr.com)  
Submitted on: 4/4/2011

Comments:

The proposed legislation (SB 1079) regarding applicability only on range land exceeding five acres, appears inconsistent with State agricultural land use designation of a minimum of two acres where at least Maui County requires active engagement in an agricultural endeavor. Those engaged in a variety of farming activities on property less than five acres are equally subjected to trespassers and their concomitant criminal activities. Consequently, any legislation covering trespassing must offer equal protection regardless of property size. It is obvious that lawbreakers have no regard for property size when they steal, damage, or vandalize expensive equipment or crops and farm animals just as thieves have no regard for house size when they burglarize it.

The proposed legislation should not exempt "minor children 12 years of age or younger. Agricultural land are not playgrounds, and children should be taught by their parents not to trespass. Those that do should be subject to appropriate procedures applicable to children. On a personal note, I have caught children younger than age 12 trespassing and stealing lychee and tangerines on my property intended for the market. They cause economic loss and expose farmers and ranchers to liability law suits just the same as adults.

I have been threatened with bodily harm when I confronted thieves stealing fruit from my property. Neither I, nor others engaged in agriculture should not be left to protect ourselves both from physical harm or from theft of crops and farm animals, damage to equipment, vandalism, and having to seek assistance from authorities to remove squatters. Ignoring the plight of agricultural property owners or lessees should never again result in a sad incident such as that on Oahu that resulted in a farmer, who was protecting his livelihood, killing a thief or a farmer finding his papayas all viciously cut down, or a rancher finding the butchered carcass of his cattle in his pasture.



**Hawaii Farm Bureau**  
F E D E R A T I O N

2343 Rose Street, Honolulu, HI 96819  
PH: (808)848-2074; Fax: (808) 848-1921

HOUSE COMMITTEE ON JUDICIARY

Rep. Gilbert Keith-Agaran, Chair

Rep. Karl Rhoads, Vice Chair

**April 5, 2011**

**2:00 pm**

**Room 325**

**SB 1079 SD2 Proposed HD2**

**RELATING TO LANDOWNER LIABILITY**

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

The Hawaii Farm Bureau Federation, as the largest non-profit general agriculture organization representing approximately 1,600 farm and ranch family members statewide, **strongly supports the original intent of SB 1079 to protect all farmers and ranchers from unfair liability. We respectfully request that you return to that intent.**

**This bill can help Hawaii's agriculture without any financial burden to the State.**

This bill is extremely important to farmers and ranchers all over the islands, and although they may not realize it, everyone in Hawaii is affected by the concerns that this bill will address.

Trespass, theft, vandalism, and liability are constant threats to Hawaii's farmers and ranchers. Every year, millions of dollars in losses are incurred as a result of agricultural trespass and theft of crop, livestock, machinery, equipment, and supplies. It is estimated that almost 10% of net farm income is lost to trespassing thieves and vandals.

Successful farms and ranches can bring Hawaii the food and energy self-sufficiency it needs. Agriculture provides not only fresh, healthy, and unique foods and beautiful flowers and plants; it's what keeps our islands green and picturesque for residents and tourists.

Farm Bureau and many others have testified at every trespass bill hearing this session to explain how ranches AND farms across Hawaii are being used without permission from owners for hiking, hunting, dirt biking, and worse---illegal activities. Hard-earned crops are stolen, livestock is endangered by cut fences and broken gates, and valuable land is used as a rubbish dump, a place to abuse alcohol and drugs and to commit other crimes. The police departments do not have the resources to address the problem.

Recent agricultural trespass and thefts highlight the need for stricter laws and better protection from trespassers who have no respect for the work that farmers do and the benefits they provide the public.

- More than \$15,000 worth of farm equipment, a truck, and taro were stolen from a community taro restoration project in Heeia, and \$14,000 worth of plants were stolen from a nursery in Waimanalo.
- If the thieves that used blowtorches to break their way into a locked area would have hurt themselves in the process, who would have been responsible for their injuries?

Farming and ranching are inherently risky. Drought, floods, bugs, disease, market prices, import competition, and transportation costs all determine success or failure. **Trespassing vandals and thieves, and the liability for their injuries should not be part of the equation.** Individuals who trespass, hurt themselves, and then sue for their injuries should not be rewarded. 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 only a minimal duty of care owed to them.

Farmers and ranchers need this law to:

1. provide **limited 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, the landowner is grossly negligent or intentionally injures the trespasser).
2. provide a clear message that if there is evidence of crops or livestock, that person should know that this land is not open to him to do what he wants, even if it is not fenced off and there are no signs telling him that the land isn't his (criminal trespass in the second degree).
3. allow significant fines (these fines are not mandatory however) against those who trespass on agricultural lands that are fenced or have signs or have evidence of crops or livestock.

We are asking that you amend this bill to protect all of agriculture from owing a duty of care to those who do not deserve it. It may make trespassers and thieves think twice before endangering themselves and the livestock and crops that don't belong to them.

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 work with you on specific language to **amend this bill to apply to all farmers and ranchers**, please contact Janet Ashman, at 226-5483.