

SB 1079

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February 24, 2011

TO: Honorable David Y. Ige, Chair
Senate Committee on Ways and Means

FROM: Gladys C. Baisa
Council Member

SUBJECT: **HEARING OF FEBRUARY 25, 2011; TESTIMONY IN SUPPORT OF SB 1079
SD 1, RELATING TO LANDOWNER LIABILITY**

Thank you for the opportunity to testify in support of this important measure. The purpose of this measure provides that owners of agricultural land or range land have no duty of care to trespassers. Establishes rebuttable presumption of no liability. Permits trespasser to overcome presumption by preponderance of evidence that owner was grossly negligent or intentionally injured the trespasser. Authorized fines of up to \$10,000 for the offense of criminal trespass on agricultural lands. Effective July 1, 2050.

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

I support this measure for the following reasons:

1. This bill is very important to farmers and ranchers who own agriculture property in the entire State of Hawai'i.
2. Trespassers, not invited guests, mistreat the farmers and ranchers, their property, animals and employees.
3. Trespassers cut the gate chains and put their own locks on the gates. They leave gates open and the animals gets mixed up and it takes hours and sometimes days to reorganize the herd of cattle.
4. Trespassers cut the fences to vandalize the property and ride motorcycles tearing up the land creating liability for the rancher. They steal livestock, supplies, equipment, tools, etc.
5. Trespassers poison the water troughs; steal water pipes, cut into the water pipes for their mobile tanks or illegal farming.
6. Trespassers conduct drug sale transactions on rancher's properties and confrontation with these trespassers high on drugs creates a very dangerous situation.
7. Dumping of trash and dead animal carcasses creates a health issue.

For the foregoing reasons, I support this measure.



SB 1079 SD1
RELATING TO LANDOWNER LIABILITY
Senate Committee on Ways and Means

February 25, 2010

9:00 a.m.

Room 211

The Office of Hawaiian Affairs (OHA) offers the following COMMENTS on SB 1079 SD1. Native Hawaiians enter onto private and public lands to exercise their traditional and customary practices, sometimes without receiving an explicit invitation from the landowner. Although Native Hawaiian traditional and customary practitioners would be able to use their constitutionally protected traditional and customary rights as a defense to trespassing, having to prove these rights as a defense to a criminal prosecution can be overly burdensome.

OHA suggests the following amendments, which can be reasonably accommodated within the statutes, to ensure recognition and protection of Native Hawaiian traditional and customary rights:

- Replace the bill's language on page 3, lines 9-11, with:

"Trespasser" means a person who enters or remains on land without the permission of the owner or the owner's agent and who is neither an invited guest nor otherwise privileged to do so, such as a person who is exercising a traditional and customary practice pursuant to Haw. Const. Art. XII § 7, HRS § 1-1, and/or HRS § 7-1.

- Change page 5, lines 10-13, of the bill to read:

(c) The person enters or remains on agricultural lands without the permission of the owner of the land, the owner's agent, or the person in lawful possession of the land, or without the privilege to otherwise do so, and the agricultural lands:

- Add the following language after line 9 on page 6:

(d) The person enters or remains unlawfully on unimproved lands or unused lands without the permission of the owner of the land,

the owner's agent, or the person in lawful possession of the land, or without the privilege to otherwise do so.

- Add a new section to the bill amending HRS § 708-800 as follows:

"Enter or remain unlawfully." A person "enters or remains unlawfully" in or upon premises when the person is not licensed, invited[,] by the land owner or lawful occupier of the land, or otherwise privileged to do so-, such as a person who is exercising a traditional and customary practice pursuant to Haw. Const. Art. XII § 7, HRS § 1-1, and/or HRS § 7-1.

OHA urges the committee to make the aforementioned amendments.
Mahalo nui loa for the opportunity to testify.



Hawaii Farm Bureau

F E D E R A T I O N

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Senate

Committee on Ways and Means

February 25, 2011

SB 1079 RELATING TO LANDOWNER LIABILITY

Chair Ige, Vice Chair Kidani, and Members of the Committee,

Hawaii Farm Bureau, on behalf of our commercial farm and ranch families and organizations across the State, **strongly supports SB 1079 SD1 with a proposed SD2**.

Farmers and ranchers need your help. The proposed SD2 will provide relief without financially burdening the State.

Farms and ranches across the State are being used without permission from owners for hiking, hunting, dirt biking, and worse---illegal activities. Our hard-earned crops are stolen, our livestock endangered by cut fences, and we 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 us for their injuries. We cannot afford to lose everything we 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.

This bill would:

1. clarify that farmers and 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 the trespasser).
2. clarify that if a person can see evidence of crops, 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. Just as every homeowner is not required to fence in his property and post signs to keep trespassers out, a farmer or rancher should not have to do so either.
3. Allow, but not mandate, significant fines for agricultural trespass.

This bill will protect farmers from owing a duty of care to those who do not deserve it. We respectfully request that you consider the proposed SD2 which will clarify the intent of the measure by defining the term "agricultural land," to include range land and necessary infrastructure, and the term "fallow," and to simplify and clarify other portions of the bill.

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.

A BILL FOR AN ACT

RELATING TO LANDOWNER LIABILITY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Chapter 663, Hawaii Revised Statutes is amended by adding a new section to be appropriately designated and to read as follows:

"§663- Trespass; no duty of care; liability of owner; rebuttable presumption. (a) Notwithstanding any provision in this chapter to the contrary, an owner of agricultural land ~~or range-land~~ owes no duty of care to keep the land safe for entry or use by a trespasser or to give any warning of a dangerous condition, use, structure, or activity on the land to a trespasser, except as provided in subsection (c)(1) and (2).

(b) There shall be a presumption that an owner of agricultural land ~~or range-land~~ is not liable to a trespasser for injury, loss, damage, or death occurring on the agricultural land ~~or range-land~~ .

(c) In any action for civil damages, the presumption that an owner of agricultural land ~~or range-land~~ is not liable to a trespasser for injury, loss, damage, or death occurring on the land may be rebutted by a preponderance of the evidence that the owner:

(1) Committed an act or omission that constitutes gross negligence or wilful or wanton disregard for the safety of the trespasser and that act or omission caused the injury, loss, damage, or death; or

(2) Intentionally injured the trespasser.

(d) As used in this section, unless the context otherwise requires:

"Agricultural land" means land used for farming operations, as defined in §165-2. ~~agricultural purposes, including general farming, cane growing, fruit growing, flower growing, grazing, dairying, the production of any form of livestock or poultry, and any other form of agricultural activity.~~ For the purposes of this chapter, it includes land required for farm buildings and dwellings, roads, and irrigation infrastructure associated with the agricultural land. ~~It includes land required for an adequate farm dwellings and other essential farm buildings, roads, adjacent lands under the control of an owner.~~

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

"Invited guest" means any person specifically invited by the owner or authorized representative of the owner to visit the agricultural land ~~or range land~~ for social, business, or other purposes.

~~"Land" means land, roads, water, watercourses, irrigation systems, private ways and buildings, structures, and machinery or equipment when attached to realty, other than lands owned by the government.~~

"Owner" means the possessor of a fee interest, a tenant, lessee, occupant, or person, group, club, partnership, or corporation in lawful possession or control of the land.

~~"Range land" means privately owned land used for livestock that is not fenced or divided into paddocks or lots and that is generally unimproved.~~

"Trespasser" means a person who enters or remains on land without the permission of the owner, ~~or~~ the owner's agent, or the person or entity in lawful possession of the land, and who is not an invited guest."

SECTION 2. Section 708-814, Hawaii Revised Statutes, is amended to read as follows:

"§708-814 Criminal trespass in the second degree. (1) A person commits the offense of criminal trespass in the second degree if:

- (a) The person knowingly enters or remains unlawfully in or upon premises that are enclosed in a manner designed to exclude intruders or are fenced;
- (b) The person enters or remains unlawfully in or upon commercial premises after a reasonable warning or

request to leave by the owner or lessee of the commercial premises, the owner's or lessee's authorized agent, or a police officer; provided that this paragraph shall not apply to any conduct or activity subject to regulation by the National Labor Relations Act.

For the purposes of this paragraph, "reasonable warning or request" means a warning or request communicated in writing at any time within a one-year period inclusive of the date the incident occurred, which may contain but is not limited to the following information:

- (i) A warning statement advising the person that the person's presence is no longer desired on the property for a period of one year from the date of the notice, that a violation of the warning will subject the person to arrest and prosecution for trespassing pursuant to section 708-814(1)(b), and that criminal trespass in the second degree is a petty misdemeanor;
- (ii) The legal name, any aliases, and a photograph, if practicable, or a physical description, including but not limited to sex, racial extraction, age, height, weight, hair color, eye color, or any

other distinguishing characteristics of the person warned;

- (iii) The name of the person giving the warning along with the date and time the warning was given; and
 - (iv) The signature of the person giving the warning, the signature of a witness or police officer who was present when the warning was given and, if possible, the signature of the violator; or
- (c) The person enters or remains on agricultural lands without the permission of the owner of the land, ~~the owner's agent, or the person in lawful possession of the land,~~ and the agricultural lands:

(i) Are fenced, enclosed, or secured in a manner designed to exclude intruders;

(ii) Have a sign or signs displayed on the unenclosed cultivated or uncultivated agricultural land sufficient to give notice and reading as follows: "Private Property". The sign or signs, containing letters not less than two inches in height, shall be placed along the boundary line of the land and at roads and trails entering the land in a manner and position as to be clearly noticeable from outside the boundary line; or

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(iii) ~~At] 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] (i) Under cultivation;

[B] (ii) In the process of being harvested; or

[C] (iii) That has been harvested.

(2) Criminal trespass in the second degree is a petty
misdemeanor~~[-]~~; provided that a fine of up to \$10,000 may be
imposed for an offense under subsection (1)(c)."

SECTION 3. This Act does not affect rights and duties that
matured, penalties that were incurred, and proceedings that were
begun before its effective date.

SECTION 4. Statutory material to be repealed is bracketed
and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, ~~2050~~2011.

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Report Title:

Landowner Liability; Trespass

Description:

| Provides that owners of agricultural land ~~or range land~~ have no duty of care to trespassers. Establishes rebuttable presumption of no liability. Permits trespasser to overcome presumption by preponderance of evidence that owner was grossly negligent or intentionally injured the trespasser. Authorized fines of up to \$10,000 for the offense of criminal trespass on agricultural lands. Effective July 1, ~~2050~~2011. (SD2~~+~~)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.