

LATE TESTIMONY

TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION TO S.B. NO. 1079, SD 2

March 16, 2011

To: Chairman Cliff Tsuji 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) in opposition to S.B. No. 1079, SD 2.

Section 1 of this bill refers to trespass in the civil area and Section 2 refers to Criminal trespass. The provision in Section 1 of this bill [subsection (a) on page 1] basically provides for immunity to the owner or occupier of land to persons who are considered trespassers. By providing that an owner of agricultural or range land owes no duty of care to keep the land safe to a possible trespasser takes away a necessary element to a cause of action for negligence. Also, the subsequent provision in subsection (c) then states that the presumption that an owner is not liable to a trespasser may be rebutted by evidence that the owner committed an act which constitutes gross negligence or an intentional act.

HAJ has always maintained that proponents of an immunity type bill should at least provide the legislature with the data and information 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 this bill is not in the public interest and would be creating bad public policy.

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 landowners in sparsely populated rural agricultural and ranching areas. This is true even with respect to a trespasser, such as a child walking home through the land if it happens to be deemed to be agricultural as defined in this bill. There are situations where the presence of people on the premises is expected and anticipated and a greater degree of care must be taken. On the other hand, there are situations where it is reasonable to spend less time and effort to make property safe when visitors are not anticipated on the property. The shortcoming of measures like this one that takes an "all or nothing" approach is the failure to recognize that safety obligations do, and should continue to, vary according to the circumstances.

I want to make it clear 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.

If certain landowners are having a specific problem with trespassers, then that problem should be examined and legislation, if appropriate, should address that problem and not apply broadly with unintended consequences. 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 radical change in social 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 less drastic measures are more appropriate. Because of the reasons stated above, HAJ opposes this bill and requests that it not pass out of this committee.

Thank you for the opportunity to testify.



HAWAII FOREST INDUSTRY ASSOCIATION

P. O. Box 5594 ❖ Kailua-Kona, HI 96745-5594

Phone: 808-933-9411

Email: hawaii.forest@hawaiiantel.net

Website: www.hawaiiforest.org

March 16, 2011

TESTIMONY IN SUPPORT SB1079: RELATING TO LANDOWNER LIABILITY

Dear Chair, Clifton Tsuji, Vice Chair, Mark Hashem and Members of the House Committee on Agriculture,

Thank you for the opportunity to testify in support of SB1079, Relating to Landowner Liability.

HFIA supports the establishment of a criminal trespass on agricultural lands enforcement fund. It 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.

HFIA is a non-profit Hawaii organization, incorporated in 1989, which promotes a balance of forest land uses and sound management practices for all of Hawaii's forests. Our industry generates over \$35 million in business for the State, through the products and services of approximately 250 member companies and individuals. We have worked closely with the Division of Forestry and Wildlife (DOFAW) and the DLNR over the past 16 years to promote, foster and develop industry standards, initiate forestry research and development, and promote quality control and industry integrity in the State of Hawaii.

Sincerely,

Tai Lake
Chairman of the Board

Heather Gallo
Executive Director

LATE TESTIMONY

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 16, 2011 10:05 AM
To: AGRtestimony
Cc:
Subject: Testimony for SB1079 on 3/16/2011 9:00:00 AM

Testimony for AGR 3/16/2011 9:00:00 AM SB1079

Conference room: 312
Testifier position: support
Testifier will be present: Yes
Submitted by: Juanita Kawamoto Brown
Organization: Individual
Address:
Phone:
E-mail: _____
Submitted on: 3/16/2011

Comments:

Food and Farm Security is imperative that criminal charges and fines must be at the highest level of security to protect the land owners and the people of Hawaii focused on food sustainability.