

SB 1207

EDT



LINDA LINGLE
Governor

MIKE MCCARTNEY
President and
Chief Executive Officer

Hawai'i Tourism Authority

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Testimony of
Mike McCartney
President and Chief Executive Officer
Hawai'i Tourism Authority
on
S.B. 1207
Relating to Trespass

Senate Committee on Economic Development and Technology
Wednesday, February 9, 2011
1:15 p.m.
Conference Room 016

The Hawai'i Tourism Authority (HTA) strongly supports S.B. 1207 which holds visitor guide websites and visitor guide publications liable for the injury or death of individuals who are enticed to trespass on private property as a result of representations in a website or publication describing attractions or activities.

Visitors frequently rely on guide websites or guide publications that encourages or invites a person to commit trespass on or through privately owned land and visitors are often injured or die as a result of trespass on private land to an attraction or activity described in the website or publication.

A guidebook, describes access Kipu Falls on the island of Kauai this way:

“To get to the falls, walk the trail on your left just before the bridge on Kipu Road (see map). The land was formerly used for growing sugar. Although the land company has posted NO TRESPASSING signs on their land, it hasn't stopped locals – who have visited this waterfall for generations – from walking to it. In fact, according to the local newspaper, community activists contend that access has occurred for so long, a “prescriptive easement” exists. Regardless, we'll just have to tell you where it is and leave the rest to you.”

It does not adequately describe the inherent dangers associated with the attraction, where numerous people have been injured and where a few have died, resulting in the landowner being sued.

S.B. 1207 amends the definition of “enter or remain unlawfully” as it is used in provisions of Chapter 708, HRS, relating to criminal trespass. It deletes the provision that says that a person entering or remaining upon “*unimproved or apparently unused land*” does so with “*license and privilege*” unless trespass notice **is personally communicated to the person by the owner or an authorized person** or by notice posed in a conspicuous manner. The definition is from the common law that was part of the Model Penal Code enacted in 1972 as part of the Hawaii Penal Code, the rationale for which was to permit hunting and fishing on private lands out of “...concern for an individual's right to secure his own material subsistence. ...Today,

hunting is generally viewed as analogous to other forms of outdoor recreation, conducted for pure enjoyment rather than sustenance.”

It also amends section 708-814 to make knowingly “entering and remaining unlawfully” on unimproved or unused land that is fenced or enclosed or with signs the offense of criminal trespass in the second degree.

We urge you favorable consideration of this measure.

Bernard P. Carvalho, Jr.
Mayor



Robert F. Westerman
Fire Chief

Gary K. Heu
Managing Director

John T. Blalock
Deputy Fire Chief

KAUA'I FIRE DEPARTMENT
County of Kaua'i, State of Hawai'i

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February 8, 2011

The Honorable Carol Fukunaga, Chair
Committee on Economic Development and Technology
The State Senate
State Capitol, Room 216
Honolulu, Hawaii 96813

Dear Chair Fukunaga:

Subject: S.B. 1207 Relating to Trespass

Aloha and Mahalo for allowing me to testify **in support of SB 1207**. I am Fire Chief Robert F. Westerman, Fire Chief for the County of Kaua'i. I hear and see it all too often and it is painful at best when we lose a visitor to tragedy. When we lost Heather Westphal and Tanaya Caltaldo at Queens Bath in October of 2008 we were doubly saddened since they were a public safety family. Heathers father a Sheriff and Heather herself an employee of the International Association of Fire Chiefs. Her father imparted on us how they had just arrived and did not even unpack because he wanted to take everyone down to Queens Bath, just a walk down the road. He read about it in the guide book and did not want to miss going there. Within an hour of their arrival his daughter and daughter in law were swept into the ocean and drown. But what really gave me chicken skin was when he said after words "Not 1 minute earlier his grandson was standing at the same ledge between them and as he walked back to grandpa the wave came and took them away". Luckily the boy never saw them swept off the ledge.

Yes we deal with this routinely and that is exactly what we do not want to do, too many unnecessary tragedies and some can be avoided. We had begged and begged the industry to work with us with little to no avail, but finally after this incident we have gotten one or two to add more ocean safety messages and some warnings but still all the pages all the "Hidden Secret Spots" are still published.

As I travel to and from the islands and to and from the mainland all too often I see the unsuspecting tourist thumbing through their guide book with pages dog eared or stickies hanging out oblivious to the danger. Their minds racing about and happy chatter figuring can they get it all done, all caution to the wind. I cringe and say to myself should I intervene and say "no go, throw that book away", no that's not right they paid good money and are excited about seeing our island and its many wonders, so I do say "When in doubt do not go out" and "Swim near a lifeguard", woefully insufficient and tragically short of good advice. We also need to remember it is not just drowning its dangerous trails and hidden waterfalls that take lives all too routinely.

The Honorable Carol Fukunaga, Chair

Page 2

February 8, 2011

I encourage you to help us find a solution, we are all responsible, yes even the visitor that tragically lost their life or a loved one. Mahalo for your support and we look forward to more discussion.

Please call me at (808) 241-4980 should you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink that reads "Robert Westerman". The signature is written in a cursive style with a long, sweeping underline that extends across the width of the name.

Robert Westerman
Fire Chief, County of Kaua'i

RFW/eld



COMMITTEE ON ECONOMIC DEVELOPMENT AND TECHNOLOGY

February 9, 2011

Testimony

SB 1207 RELATING TO TRESPASS

Chair Fukunaga and Members of the Committee,

Maui County Farm Bureau on behalf of our commercial farm and ranch families and organizations on the island is in **strong support** of the intent of SB 1207, holding authors of publications and websites liable for readers who suffer injury or death during the conduct of trespass, while exempting property owners from liability for these incidents.

As one of the most publicized tourist destinations in the world, Maui's farmers and ranchers face significant trespass challenges, possibly more than elsewhere in the State. Some of the visitor publications are blatant in their disregard of private property, encouraging visitors to ignore any signs that warn people not to trespass. Note this excerpt from the very popular 2009, 4th edition tour guide book, "Maui Revealed, The Ultimate Guidebook":

"...an awkward, potentially injurious five-minute walk, and a NO TRESPASSING sign. Is it worth going to? To us, it sure is!..."

This type of completely irresponsible and potentially dangerous enticement used by tourist publications must stop.

However, there are challenges to crafting this bill so that it will not penalize the authors of a legitimate news story that inadvertently lures visitors to trespass after they read about the site. People often wonder why farmers and ranchers are reluctant to speak in public. Some of our farmers have been victims of theft after an article about their farm is published. Once bitten you do not repeat the experience. A news article normally does not encourage people to trespass; yet people do.

In addition, many of our farmers and ranchers have their own websites that describe their farms. The photos and descriptions may inadvertently entice readers to trespass. We would not want this bill to have the unintended consequence of providing a loophole to trespassers or thieves who might defend themselves by claiming that the farm website invited them to trespass on the property.

We appreciate your consideration of this measure and are willing to work with you to identify language that will not result in unintended consequences. We respectfully request dialogue between landowners, agriculture, and the travel industry, to identify workable language. We ask your support in moving this bill forward.

Thank you for this opportunity to provide our opinion on this important matter. If there are questions, please contact Warren Watanabe, Executive Director of MCFB at 2819718.



Hawaii Cattlemen's Council, Inc.

P O Box 437199 Kamuela HI 96743
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e-mail: HCattlemens@hawaii.rr.com

SENATE COMMITTEE ON ECONOMIC DEVELOPMENT AND TECHNOLOGY

Wednesday February 9, 2011, 1:15 p.m. Room #016

SB 1207 RELATING TO TRESPASS

Holds authors and publishers of visitor websites and publications liable to readers who suffer injury or death as a result of being enticed to trespass; exempts property owners from liability.

Chair Fukunaga 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** the SB1207.

Landowners, including cattle ranchers statewide, have been having terrible problems over the years with trespassers. In some case, trespassers come on our lands to maliciously do damage to our property and in other cases cut fences or leave gates open, sometimes allowing cattle to get out onto the road. Often, when a car hits a cow it leads to disastrous results for both the cow and the car occupants leading to major liability for the cattle rancher. In other cases, trespassers sometimes get injured while trespassing, and then have the audacity to sue the landowner for the results of their illegal trespass activity. While in some cases the trespasser does not prevail in court, the landowner must nevertheless spend time and money to defend themselves. To add insult to injury, the publishers and authors of these guide books who encourage people to trespass on our private lands are immune to responsibility.

Some of these guide books imply that the trespassing won't hurt anyone, after all the landowner sometimes charges visitors to go on the same hike or activity. Of course the difference is people trespassing get no safety briefing or the benefit of an experienced guide or chaperone who can keep them away from dangerous areas or situations.

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

From: mailinglist@capitol.hawaii.gov
To: [EDTTestimony](#)
Cc: mgalimba@kuahiwiranch.com
Subject: Testimony for SB1207 on 2/9/2011 1:15:00 PM
Date: Friday, February 04, 2011 9:05:22 PM

Testimony for EDT 2/9/2011 1:15:00 PM SB1207

Conference room: 016
Testifier position: support
Testifier will be present: No
Submitted by: Michelle Galimba
Organization: Hawaii Cattlemen's Association
Address:
Phone:
E-mail: mgalimba@kuahiwiranch.com
Submitted on: 2/4/2011

Comments:

MAUI CATTLEMEN'S ASSOCIATION

*Maui Cattlemen's
Association*

PO Box 473

Kula, HI 96790

*Board of Directors
and Officers*

Brendan Baltazar

Harry Cambra

Alex Franco

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Mike Murakami

Amber Starr

Toni Thompson

*Sustaining
ranching
communities in
Hawaii*

TESTIMONY

February 7, 2011

Submitted via email: EDTTestimony@Capitol.hawaii.gov

FROM: Maui Cattlemen's Association

TO: COMMITTEE ON ECONOMIC DEVELOPMENT AND TECHNOLOGY
Senator Carol Fukunaga, Chair
Senator Glenn Wakai, Vice Chair

HEARING DATE: Wednesday, February 9, 2011

HEARING TIME: 1:15 p.m., Conference Room 016 State Capitol

MEASURE #: SB 1207 RELATING TO TRESPASS

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

We **SUPPORT SB 1207 RELATING TO TRESPASS.**

We strongly feel that Authors and Publishers of visitor websites and publications shall be liable to readers who suffer injury or death as a result of being enticed to trespass on private property. In addition, property owners should be exempted from liability. Some of these areas have naturally formed unsafe formations, and should not be recommended to anyone. It is unfair to a visitor to be put into this situation. When they realize that it's not where they want to be, matters get worst as they try to make their way around or back to their car. It is also unfair to a property owner to have to deal with trespassers, as it puts a damper on their operation as well as their day.

Thank you for the opportunity to provide comment on this Senate Bill.
You may reach the Maui Cattlemen's Association through the address provided above.

Sincerely,

William Jacintho, President

Amber Starr, Vice President



Maui Hotel & Lodging
ASSOCIATION

Testimony of
Carol Reimann
Executive Director
Maui Hotel & Lodging Association
on
SB1207
RELATING TO TRESPASS

COMMITTEE ON TOURISM
Wednesday, 02-9-11 1:15am
Conference room 016

The Maui Hotel & Lodging Association (MHLA) is the legislative arm of the visitor industry. Our membership includes approximately 120 property and allied business members – all of whom have an interest in the visitor industry. Collectively, the MHLA membership employs over 10,000 Maui County residents.

MHLA is in **strong support with comment** of the intent of SB1207, holding journalists, publications and websites liable for readers who suffer injury or death during the conduct of trespass and exempts property owners from liability.

Visitors are lured into trespassing onto private property (i.e. farmers and ranch lands) by irresponsible journalists and publications. These journalists/publications recklessly explain in detail about scenic and recreational locations that can be “discovered” or “revealed” by illegally trespassing. In the process, private properties are often times violated - they become dumping grounds for stolen goods and crime. We strongly support the intent of this measure to protect landowners from injuries or damage to trespassers and their property.

People read articles in publications and see stunning visuals on websites of out-of-the-way, unique locations of natural beauty. By learning of these extraordinary sites, people naturally want to seek them out.

We do not believe that the intent of this measure is to imply that by merely writing about a unique location or including a picture in an article or website means that the journalists are “inviting” people to seek out the special location. There may need to be clarification so such journalists will not be innocently included as a target by this measure that includes the term “attracts” or “entices.” It is our hope that this bill only target the authors that specifically tell people to ignore trespass signs or to ignore private property signs.

We appreciate your consideration of this measure to avoid unintended consequences to responsible journalists; and move this bill forward to protect landowners.

Thank you for the opportunity to testify.

February 7, 2011

In the Senate Economic Development
and Technology Committee
Hawaii State Senate

Memo in Opposition to Hawaii Senate Bill 1207

The members of Media Coalition believe that Senate Bill 1207 is clearly unconstitutional. We also believe the Senate Bill 1208 is unconstitutional. The trade associations and other organizations that comprise Media Coalition have many members throughout the country, including Hawaii: publishers, booksellers and librarians as well as manufacturers and retailers of recordings, films, videos and video games and their consumers.

S.B. 1207 would impose civil liability on any author or publisher of any visitor guide or website that “invites, attracts, or encourages” a person to illegally trespass if a person does so in reliance on the guide and suffers an injury or dies. A “Visitor guide publication” is defined as any book, magazine, pamphlet, mailer, handout or advertisement that provides information about a visitor destination, geographic destination, or natural attraction on privately owned land in Hawaii. A “Visitor guide website” is any website, blog, twitter account, forum, or other wireless communication that provides information about a visitor destination, geographic destination, or natural attraction on privately owned land in Hawaii.

This legislation raises serious Constitutional problems. Clearly, the speech at issue is fully protected by the First Amendment. Speech is protected unless the Supreme Court tells us otherwise. As the Court said in *Free Speech Coalition v. Ashcroft*, “As a general principle, the First Amendment bars the government from dictating what we see or read or speak or hear. The freedom of speech has its limits; it does not embrace certain categories of speech, including defamation, incitement, obscenity and pornography produced with children.” 535 U.S.234, 241 (2002). S.B. 1207 singles out a certain type of fully protected speech for regulation; such a content-based regulation of speech is “presumptively invalid.” *R.A.V. v. City of St. Paul*, 505 U.S. 377, 382 (1992).

Any constitutional infirmities of S.B. 1207 are not cured by the fact that the legislation would create a private civil tort action, rather than imposing a direct government sanction on the speaker. It is well established that the First Amendment does not allow application of state tort law in a way that violates free speech. *See, New York Times v. Sullivan*, 376 U.S. 254, 265

(1964) (“Although this is a civil lawsuit between private parties, the Alabama courts have applied a state rule of law which petitioners claim to impose invalid restrictions on their constitutional freedoms of speech and press. It matters not that the law has been applied in a civil action, and that it is common law only, though supplemented by statute.”)

Civil liability creates a substantial chilling effect on the producers and distributors of such material. The prospect of being responsible for the behavior of each viewer, reader or listener is likely to frighten producers and distributors to the point where it will severely chill the dissemination of constitutionally protected works. Due to this potential chilling effect, courts have repeatedly held that absent actual incitement to imminent lawless action, those who produce or sell First Amendment-protected material may not be subjected to financial liability for the unlawful or violent acts of third parties, even if they were influenced by specific media. *Brandenburg v. Ohio*, 395 U.S. 444 (1969).

In third-party liability cases where the perpetrator or victim had copied what he or she read or saw, courts have barred or thrown out suits seeking civil damages. *See, DeFilippo v. NBC* 446 A.2d 1036 (R.I. 1982) (parents of deceased minor brought wrongful death action after their son hanged himself copying a stunt he saw on the Tonight Show); *Herceg v. Hustler Magazine, Inc.* 814 F.2d 1017 (5th Cir. 1987) (court reversed jury verdict in wrongful death action brought by parents against publisher for adolescent’s death allegedly caused by article that described autoerotic asphyxia); *Yakubowicz v. Paramount Pictures Corp.*, 404 Mass. 624 (1989) (wrongful death action brought by father of person killed by perpetrator who had just seen the movie *The Warriors* even though he quoted lines from the movie while committing the crime); *Zamora v. CBS, Inc.*, 480 F.Supp. 199 (S.D. Fla. 1979) (teenager sued the television networks for violent programming that he alleged caused him to commit criminal acts).

Courts have declined to impose liability on publishers even where a reader has relied on the content of a book that turned out to be inadequate or incorrect. In *Birmingham v. Fodor’s Travel Publications, Inc.*, the Supreme Court of Hawaii ruled that the publisher had no duty of care to the plaintiff and could not be held liable. 73 Haw. 359 (1992). *See also, Winter v. G.P. Putnam & Sons*, 938 F.2d 1033, 1036-38 (9th Cir. 1991) (affirming on First Amendment grounds the grant of summary judgment to publishers of a mushroom encyclopedia who had been sued by mushroom enthusiasts who were sickened after eating mushrooms that the book said were safe).

The members of Media Coalition consider third party liability so deadly to free speech they challenged an Indianapolis ordinance in 1984 that sought to give victims of sex crimes a cause of action against producers and distributors of the material that allegedly caused the crime. The ordinance was struck down. The decision was upheld unanimously by a three-judge panel of the appeals court and summarily affirmed by the U.S. Supreme Court. *American Booksellers Assn. v. Hudnut*, 771 F.2d 323 (7th Cir. 1985), *aff’d*, 475 U.S. 1001 (1986). The members challenged a virtually identical ordinance in Bellingham, Washington which was also struck down. *Village Books v. City of Bellingham*, No. C88-1470D (W.D. Wash. Feb 9, 1989).

Finally, imposing third-party liability for injuries on producers or distributors of First Amendment protected material is a questionable policy for two reasons: first, it makes innocent

third parties responsible for the acts of those trespass and, second, it diminishes the responsibility of the trespasser, since he or she can claim that something he saw or heard "made me do it."

Again, if enacted, S.B. 1207 will suppress speech protected by the First Amendment. Please protect free speech and oppose this legislation. If you would like to further discuss our position on this bill or S.B. 1208, please contact me at 212-587-4025 #3 or at horowitz@mediacoalition.org.

Respectfully submitted,

/s/ David Horowitz

David Horowitz
Executive Director
Media Coalition, Inc.



455 Massachusetts Ave., NW, 7th Floor
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Thomas H. Allen
President and
Chief Executive Officer

February 7, 2011

To the Senate Economic Development and Technology Committee
Hawaii State Legislature

Memorandum in Opposition to SB 1207

I write on behalf of the Association of American Publishers, Inc. (AAP), the national trade association of the U.S. book publishing industry, and its 280 member publishing houses, to express strong opposition to S.B.No 1207. The bill is an ill-conceived attempt to impose civil liability on publishers of “visitor guides” and “visitor guide websites” if readers who trespass on privately owned land are injured or killed. The proposed legislation is totally inconsistent with well-established tort law and First Amendment principles. Simply stated, publishers of general circulation works cannot be held liable for the actions of their readers.

Because such a statute or any similarly worded law would inevitably be struck down on First Amendment grounds, we urge the legislature to consider alternative measures to deter illegal conduct. The answer does not lie in legislation that infringes upon constitutionally protected speech.

Many courts, including the Supreme Court of Hawaii, have rejected tort claims against book publishers that have attempted to impose liability for actions resulting from information that turned out to be erroneous. See *Birmingham v. Fodor’s Travel Publications, Inc.*, 833 P.2d 70, 75 (1992). In rejecting such claims, the courts have recognized that a cause of action such as the one proposed by S.B. 1207 would inflict serious damage on publishers’ First Amendment rights. In *Alm v. Van Nostrand Reinhold Co.*, 134 Ill. App.3d 716, 717 (1985), for example, the court noted the “chilling effect which liability would have upon publishers” if the publication of a “how to” book imposed a duty of care on the publisher. In *Barden v. HarperCollins Publishers, Inc.*, 863 F. Supp. 41 (D. Mass. 1994), the court expressed concern about the “pandora’s box” that would be opened by such a cause of action.

It is evident from these rulings and the larger body of case law that imposing civil liability on a publisher for readers “enticed to trespass” is impermissible under the First Amendment. In addition, the harm caused by S.B. 1207 would ultimately extend beyond the publisher whose speech is stifled and reach the public, which will be deprived of valuable information about Hawaii.

Although AAP is convinced that even a bill more narrowly written could not pass constitutional muster, the startling breadth of the S.B. 1207 and its companion bills is worthy of comment. Section 2 defines the cause of action as applicable to any visitor guide that “encourages, invites, or attracts” the reader to trespass. Those broad terms could apply to an attractive photograph, to a description of a geological formation as “remarkable” or “interesting,” or to the mere mention of a location as having historical interest. In acknowledging that visitors’ guides “may inadvertently invite visitors to trespass,” the language of the bill confirms that the cause of action is intended to apply whether or not the publisher intended to induce readers to trespass. The sweeping breadth of this legislation would invite a flood of frivolous claims, intensifying the chilling effect of such a law.

AAP urges the legislature to reject S.B.1207 and its companion bills and to focus instead on alternative means of discouraging the trespassing that is the actual wrong for which a remedy is sought.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Tom Allen", followed by a long horizontal line extending to the right.

Tom Allen
President and CEO
Association of American Publishers

My name is George Thompson and I am the owner of Fathom Five Divers on Kauai.

I am writing in reference to SB1207, a bill introduced to the Senate by Kauai representatives. The bill redirects the liability from death or injury from private landowners to any person that knowingly or unknowingly entices someone to trespass on private property.

When I first saw this, I was and am still am, greatly concerned over the lack of protection for any person or entity that might have unknowingly caused another to trespass on private property resulting in either injury or death. The bill never took into consideration the thousands of pamphlets, blogs, websites and visitor publications that are in use today and had no idea that recommending a location that has been in use for years would make them liable to lawsuits from any person claiming to have used that publication to find that spot. Our company has snorkeling maps that are no longer published that direct visitors to a place called Kipu Falls. Until two weeks ago, I never knew it was on private land and if this bill passes, I could be held liable for any person carrying a map of mine, from years ago, that shows them this site. This at the time was my biggest concern.

After I returned from the last hearing I had a nagging feeling that there was more to this bill than was being portrayed and it bothered me. I contacted several publishers and writers and had them read the bill. I also sent it to friends on other islands and the mainland and asked their opinions. Every single one of them came back from this with the same response. "Are you guys nuts???" They were all amazed that a bill with so many unintended aspects to it would even come close to passing. They brought up multiple concerns and issues that I had never even thought of.

In addition to the lack of a grandfather clause, there is also the overall question of the legality of taking on an issue that the US constitution has always addressed. Many of the people that I asked couldn't believe that the State of Hawaii could put into law anything that would question the right given to the people of the United States for a free and unencumbered press. But the bill does just that. Creating a situation where writers can be held liable for their actions no matter what they say because it will still allow for massive litigation whether a writer even knew if a place was private or if they were recommending that a person trespass. When I addressed this issue with a representative of the Kauai Visitors Bureau in the last committee meeting, her response to me was "Well they better do their research better than, huh?" That response was unacceptable for me. I am one of the people that may be damaged here and the representatives that are attempting to pass this bill should be protecting my rights along with those of the people that visit here. Having a public servant tell me to do better research instead of trying to adopt a law that unintentionally could cause me to lose my business is in my opinion a flagrant disregard for who I am and what I do.

Next, has anyone thought of the consequences that this bill would have on the travel writing business here in Hawaii? What about movies and television? If an article, show or movie shows a pristine beach where their actors frolic and play, would that entice their viewers or readers to try and get there? Could that be seen by a lawyer as enticing to trespass. To me the bill is unclear on these issues. Could this bill have the unintended consequence of making writers, producers and directors find another location where they might not be held liable for inadvertently enticing people to trespass? It seems to me that if I were a travel writer the only place I would even think of describing would be the inside of my hotel room and then only with a subtitle making sure people know they have to pay for their room before they try and get inside.

Insurance is another issue that does not seem to have been taken into consideration by the authors of this bill. As a professional diver in a liability-driven business, I can tell you from firsthand experience that if an insurance company gets a whiff that something might not be defensible in court it will drop that item like a hot potato. What if travel writers can get insurance? Can you imagine the drop in tourism if we lose the writings we enjoy because of the many beautiful locations that we show online, in magazines, in newspapers? When I asked one of the authors of the bill about this fact and questioned whether National Geographic would still do a photo shoot on the volcano his response was "They have a whole bunch of lawyers". Again this is an unacceptable answer to me.

Last but not least, it is now my opinion that this law is not about protecting visitors from the dangers they encounter but targeting a very small group of publishers to try and get them to do what landowners want. Why they have been targeted I can only guess but it is not these persons that I am worried about. It is people like me that are the unintended victims of a bill designed to prevent one or two persons of the press from doing their job. This bill cannot pass. If it does I promise you that the issues will be far reaching and unintended. They will be real and they will be costly. Costly to the State of Hawaii. Costly to the people that work here and costly to the freedoms that we have and are guaranteed by our constitution.

Thank you for your time.

George

February 7, 2011

**Senate Committee on Economic Development & Technology
Hearing Date: Wednesday, February 9, 2011**

**Testimony in Support of SB 1207–
Relating to Trespass**

Honorable Chair Carol Fukunaga, Vice-Chair Glenn Wakai and Economic Development & Technology Committee Members:

My name is Marissa Sandblom, and I am the Vice President of Grove Farm Company, Inc. Grove Farm is headquartered in Lihue, and owns approximately 40,000 acres on Kaua'i, making it one of Kaua'i's largest private landowners. Throughout our transition from a sugar plantation to a sustainable community development and economic development company, we have remained committed to our island community.

Grove Farm appreciates this opportunity to testify and is **in strong support** of SB 1207, which holds authors and publishers of visitor websites and publications liable to readers who suffer injury or death as a result of being enticed to trespass; exempts property owners from liability.

Grove Farm's support is based on the fact that there are many guide books and visitor guide destination publications that seemingly invite potential visitors to trespass on remote private property to experience an attraction or activity. Grove Farm owns Kipu Falls and the land surrounding it and while the area is privately held, guide books and other publications constantly refer to the area and provide detailed information on how to access the area, enticing people to trespass.

Grove Farm's Position. As a longtime kama'aina company, Grove Farm is committed to continue being a responsible steward of our 'aina. We believe that due to the risks of encouraging people to visit areas on private land, including such information in guidebooks or visitor destination publications is inherently irresponsible. Visitors frequently rely on guide books and other similar publications to learn about available activities and attractions and describing how to access an area of private land can lead to disastrous consequences.

Grove Farm is **in strong support to SB 1207**, which holds authors and publishers of visitor websites and publications liable to readers who suffer injury or death as a result of being enticed to trespass; exempts property owners from liability.

Thank you for the opportunity to express our support for this matter.



HALEAKALA RANCH
• EST. MAUI 1888 •

February 8, 2011

COMMITTEE OF ECONOMIC DEVELOPMENT AND TECHNOLOGY
Senator Carol Fukunaga, Chair
Senator Glenn Wakai, Vice Chair

Hearing Date: Wednesday, February 9, 2011
Hearing Time: 1:15pm, Conference Room 016 State Capitol
Measure: SB 1207 Relating to Trespass

Ladies and Gentlemen:

Haleakala Ranch Company strongly supports SB 1207 relating to trespass.

Haleakala Ranch Company is a family-owned Company that has been in the ranching business on Maui for over 100 years and owns approximately 30,000 acres of land on Maui. The Company is very concerned about the significant risk of lawsuits resulting from unlawful trespass due to visitor guide websites and publications that entice visitors to experience Hawaii by trespassing onto private property.

We believe SB 1207 provides much needed liability protection for landowners who are unable to prevent such unwanted publicity and trespassing from occurring.

We strongly support SB 1207 and appreciate the opportunity to provide our testimony on this Senate Bill.

Sincerely,

Don Young
President & CEO

From: mailinglist@capitol.hawaii.gov
To: [EDTTestimony](#)
Cc: publisher@besspress.com
Subject: Testimony for SB1207 on 2/9/2011 1:15:00 PM
Date: Tuesday, February 08, 2011 9:17:25 AM

Testimony for EDT 2/9/2011 1:15:00 PM SB1207

Conference room: 016
Testifier position: oppose
Testifier will be present: Yes
Submitted by: Benjamin Bess
Organization: The Bess Press, Inc.
Address: 3565 Harding Ave. HI
Phone: 808 2925243
E-mail: publisher@besspress.com
Submitted on: 2/8/2011

Comments:
Aloha,

My name is Benjamin "Buddy" Bess and I am writing in strong opposition to Senate Bill 1207.

As the owner of the Bess Press publishing company, we are a family owned small business located in Kaimuki since 1979. We publish 100's of books on and about Hawaii & the Pacific Island for educators as well as general interest books like Pidgin to da Max, Waikiki Tiki, Hawai'i's Spam cookbook and 200+ other titles including a small number of small visitor guide books and maps. Recently we merged with Editions Limited to publish and reprint books like "View from Diamond Head," "Stories of Rell Sunn" and "Hamakua Hero."

Although we would and have never published a book that would advocate the trespassing on private property neither can we be held 100% responsible for the writings of our authors, the photographs of our photographers, the maps of our cartographers nor the illustrations of our illustrators, nor can bookstores, libraries nor book distributors be held responsible for errors and omissions that might occur in any work.

There are existing laws that prohibit trespassing on private property and as such individual property owners have full legal recourse should their property rights be trespassed. As a property owner and I do not think such a law is necessary at all. In my opinion I believe Hawaii has a long history of shoreline access for all and if anything this law should be extended to mountain top access provided there are safe trails and these trails don't infringe on private property. The Hawaiian concept of the Ahapuaa is something built into historical custom for 100's of years.

I've been in the book publishing business for 41 years and have never seen a law that so directly and specifically targets book publishers. Why not include book editors, distributors, bookstores, retailers, cartographers, illustrators, photographers and libraries, web designers, etc..? It appears on the surface that this law was written to specifically target somebody or some publishing company and by doing so ends up targeting an entire industry.

The bill on the surface is seemingly protective of property owners. The bill unfortunately goes beyond what it is intended and with a large brushstroke makes publishers and authors liable for what is written. This abridges the 1st amendment of free speech and freedom of the press and although not a lawyer I can't imagine this law holding up in court. If this law is passed and tested it will cost the publisher and authors sizeable amounts to defend and win against a law that is seemingly indefensible.

The book publishing process is an honored one that brings to life ideas, pictures and words to life for thousands of readers. The book process as a business is a risky one to begin with and because of a variety of tsunamis that we've experienced lately not a very profitable one. A law such as this will

make any publisher think twice or three times about publishing a guide book, a children's book with maps, photographs, etc . that "may" have private property in the background or foreground and even unintentionally entice the reader to trespass on that property.

Hawai'i has a strong publishing history from early Missionary days in which scores of newspapers existed in English and Hawaiian. More recently the decentralized nature of the music and publishing business has opened the floodgates to an explosive number of self published books and cds not to mention videos. Are all these creators of art liable for their expression under this law? Will artists themselves be held libel? If not ... why not? If so ... why?

The state itself spends millions of dollars to get tourists to come to Hawaii through advertisements, handouts, advertisements and web sites and internet blogs, etc. features much of the physical beauty of Hawaii. Will the state of Hawaii hold itself responsible and liable should anybody see any of this advertising and inadvertently step on private property perhaps drawn to the property because of the beauty of the surrounding areas portrayed? Guidebooks draw visitors to Hawai'i which the state supports. This law will inhibit guidebooks from being published and ironically in the end hurt the states # one industry; tourism.

I respectfully submit that this law is unnecessary, unwarranted and infringes directly on the 1st amendment rights of authors, photographers, cartographers, illustrators and publishers.

Respectfully,

Benjamin E. Bess
Publisher, TheBess Press
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Honolulu, HI 96816

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BEFORE THE
SENATE COMMITTEE ON
ECONOMIC DEVELOPMENT & TECHNOLOGY

Senator Carol Fukunaga, Chair
Senator Glenn Wakai, Vice Chair

SB1207 RELATING TO TRESPASS

TESTIMONY OF
ANDY DOUGHTY
President

Wizard Publishing, Inc.
P.O. Box 991
Lihue, Hawaii 96766-0991

February 9, 2011, 1:15 pm
State Capitol, Room 016

Chair Fukunaga & members of the Committee:

My name is Andy Doughty, President of Wizard Publishing, Inc. Wizard Publishing is a locally-owned company which publishes guidebooks for Oahu, Kauai, Maui and Hawaii. I appear before this Committee in STRONG OPPOSITION to SB1207, which holds authors and publishers of visitor websites and publications liable to readers who suffer injury or death as a result of being enticed to trespass and exempts property owners from liability.

SB1207 is overly broad, holding publishers and authors responsible for the acts of individuals it has no control over. In particular, we oppose SB1207 for the following reasons:

- Protection for Landowners from injuries to trespassers already exists in HRS, Ch. 520, (Hawai`i's "Recreational Use Statute"), so the proposed legislation adds nothing in that regard, despite stating this is the purpose of the current SBs.

The purpose behind the Recreational Use Statute was to get landowners to be *more lenient* about letting visitors onto their land to go hiking, swimming, etc., by eliminating the landowners' liability and thereby promoting tourism. *See, e.g., Stout v. U.S.*, 696 F. Supp. 538, 539 (D. Haw. 1987). SB1207 seeks to (1) protect landowners who are already protected and (2) impose strict liability on those who cannot account for whether a landowner who has previously allowed recreational use suddenly throws up a "No Trespassing sign." Nor does it account for public access which is lawful, notwithstanding signs.

- The result of the legislation will very likely be to force guidebook publishers and others to altogether cease publications and information regarding Hawai`i, because:

1. Any website, commercial wireless forum, blog or other social media communication, such as an online bulletin board, which has the capability for viewers to post/publish live, on-line comments (such as Frommer's website or Twitter or Facebook) would have to shut it down altogether, because they would be strictly liable for the content of their site even if they did not place the information on the site. The cost and effort necessary to constantly review and censor third-party reader posts would prohibit continued operation;
2. The legislation would extend to Google, Yahoo, YouTube, Twitter, Bing, Flickr, Facebook, Wikimaps and Wikipedia, etc. and any other online search engines that bring up photographs or favorable descriptions of attractions which could be deemed as "enticing" visitors. A search on Google, for example, for "Kipu Falls" brings up 9,710 results;
3. Publishers are liable even if the "NO TRESPASSING" signs are invalid, such as, erected by someone *other than* the landowner possessing the rights to control access;
4. Tens of thousands, or more, of old editions of guidebooks are in circulation and beyond control of the publishers and cannot be modified to change their content or to include warnings; and
5. Publishers would likely lose their Error and Omission Insurance for all Hawaii-related titles/websites, which would force them to drop those publications and sites;

Thus, the "big picture" result of the legislation will be impairment and diminishment of tourism in Hawaii.

Other practicable and important considerations include:

- Guidebooks/websites promoting Hawai'i should not be treated differently than other forms of media, such as television, movies, cable, etc., that provide images and/or information on sites, thereby potentially "enticing" tourists to trespass to get there.
- Non-visitor-guides about Hawai'i that contain information and/or pictures of remote attractions on non-public lands (such as a coffee table book featuring Hawai'i's waterfalls) would fall within the definition of "visitor guide publication," thereby affecting photo-journalists, writers, etc., and extending much broader than it would appear the drafters intended. These publications would also likely lose insurance.
- The same unintended consequences exist for various local businesses that run websites or distribute marketing materials, such as farms, ranches or dive companies. (See, e.g., Maui County Farm Bureau Submission re HB548 to Committee on Tourism dated January 31, 2011 and Fathom Five Divers Submission re HB548 and HB552) In fact, any newspaper or

news agency that reports on a privately-situated attraction could be deemed to have “enticed” a trespasser who read the article or saw the report.

- If a visitor were to be hurt accessing an attraction on private land, he or she would only have to do minimal post-injury research to see if any “publishers” had ever featured the attraction and sue any or all of them. That the injured plaintiff did *not* in fact read the publication or visit the website and was *not* enticed by it would be virtually impossible to prove.
- There are much narrower and simpler means to curb trespassing at specific sites (such as Kipu Falls – which appears to be the most hot-topic spot), if that is the true motivation behind the bills. The current approach is overkill.
- No other state or federal jurisdiction in the United States has such a law.

SB1207 also raises serious legal issues due to significant digressions from Hawai`i’s historical common law on trespass, negligence and strict products liability, as well as, certain First Amendment principles, all of which follow the prevailing approaches from all other state and federal jurisdictions. For example:

- In 1992, the Hawai`i Supreme Court expressly *rejected* an injured plaintiff’s attempt to impose liability on Fodor’s Travel Guides for failing to warn in its guidebook of inherently dangerous surf conditions at Kekaha Beach on Kauai. (*See Birmingham v. Fodor’s Travel Publications, Inc.*, 73 Haw. 359 (Hawaii 1992).) The Hawaii Supreme Court in *Fodor’s* held: (1) under Hawaii’s common law on negligence, the publisher owed no special duty to the reader to warn of dangerous conditions¹, and; (2) even if it did, the reader’s decision to ignore indicated, potentially dangerous conditions was a superseding cause of the injury; (3) no claim for strict liability could be maintained because a guidebook disseminating opinions was not defective “product;” and (4) imposing liability on guidebooks presenting opinions and ideas would start down a thorny path regarding chilling of First Amendment freedom of speech. On this point, quoting favorably from *Alm v. Van Nostrand Reinhold Co.*, 134 Ill. App. 3d 716, 717, 480 N.E.2d 1263, 1264 (1985), the Hawaii Supreme Court in *Fodor’s* Court stated:

More important for our purposes, however, is the chilling effect which liability would have upon publishers Even if liability could be imposed consistently with the Constitution, we believe that the adverse effect of such liability upon the public's free access to ideas would be too high a price to pay.

Id., at 368-369. *See also Winter v. G.P. Putnam’s Sons*, 938 F.2d 1033 (9th Cir. 1991).

The existing legislation, thus, (1) imposes a duty of care on a publisher that was previously found by the Hawaii Supreme Court to not exist under the common law, (2) makes that duty one of strict liability, as opposed to reasonableness, which the Hawaii Supreme Court

¹ Regarding the first point, *Fodor’s* limited its ruling to publishers who do not create or author their content, as those were the facts and parties before them.

previously found to be inappropriate in the publisher-guidebook, free ideas context; (3) renders irrelevant any contributory or superseding negligence or recklessness by the reader/trespasser; and (4) stifles First Amendment freedom of idea principles that the Hawaii Supreme Court deems worthy of strong protection. This is surely cannot be what the drafters intended.

- Other cases from around the nation have similarly rejected efforts to pin liability to the creators of various forms of social media for allegedly enticing, promoting or attracting viewers and users to commit crimes. For example, courts have routinely dismissed claims that violent video games enticed or encouraged players to commit acts of violence harming themselves and/or others. In *James v. Meow Media, Inc.*, 300 F.3d 683 (6th Cir. 2002), *cert. denied*, 537 U.S. 1159 (2003), heavily cited by both state and federal courts, the Sixth Circuit Court of Appeals held that the maker of several (admittedly) violent video games could not be held liable for the criminal acts of a high school student who played those games and later shot and killed several co-students. The Court explained that for liability to attach, the defendant must have given the actor the direct instrument that caused the harm and that, in video game cases, the injuries were too far removed. The *Meow Media* Court, further, held that the video games, like guidebooks, were not to be considered defective “products” giving rise to strict liability and discussed at length the same First Amendment issues as in *Fodor’s*. *Meow Media* mimicked the *Fodor’s* decision, stating:

the Court is loath to hold that ideas and images can constitute the tools for a criminal act ... or even to attach tort liability to the dissemination of ideas. Attaching tort liability to the effect that such ideas have on a criminal actor would raise significant constitutional problems under the First Amendment that ought to be avoided.

Id., at 695.

- The legislation also improperly mixes the concepts of civil and criminal trespass. (See Submission of Hawaii Association for Justice dated January 31, 2011 in opposition to HB548.)

I STRONGLY OPPOSE SB1207, and urge you to hold this bill. Thank you for the opportunity to testify on this matter.

CASE LOMBARDI & PETTIT

A LAW CORPORATION

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January 31, 2011

Honorable Chair Carol Fukunaga
Senate Committee on
Economic Development And Technology
Hawaii State Capitol

Re: Testimony in Support of SB 1207 Relating to Trespass and Visitor Guides

Honorable Chair Carol Fukunaga, Vice-Chair James Glenn Wakai and Committee Members:

Our law firm, Case Lombardi & Pettit, appreciates this opportunity to submit written testimony **in strong support** of SB 1207. Our firm represents many landowners, large and small, across Hawaii and we have seen firsthand the difficulties imposed on our clients by irresponsible guidebook and visitor destination publications. Guidebooks and visitor destination publications routinely fail to identify the fact that many of the entries in these publications are on private land, and that entry by the general public without the landowner's knowledge or consent constitutes trespass. In cases where the landowner has posted no trespassing signs, such entry may constitute trespass in the second degree.

Furthermore, guidebooks and visitor destination publications often extol natural features that are inherently dangerous, and fail to adequately advise readers of the dangers involved. The guidebooks and visitor destination publications often give quite detailed directions on how to access the sites, and appear to encourage readers to park cars on private property, jump fences, cross land in active agricultural uses, and otherwise act in inappropriate ways.

Many of our clients' have made repeated efforts to have guidebooks and visitor destination guides remove certain locations, to no avail. While we certainly support the right of guidebooks and visitor destination publications to publish information on areas open to the general public, we believe that guidebook and visitor destination publications must respect the wishes of private landowners to not have the general

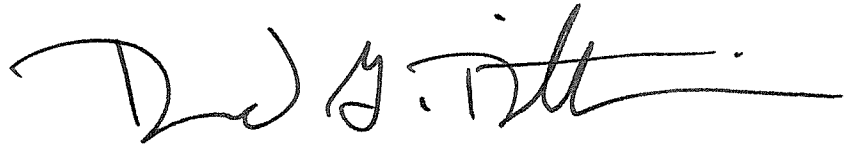
public come on to private property, especially in instances where the areas may be inherently dangerous.

We strongly believe that guidebooks and visitor destination guides should be held liable for any injury or death in instances where the guidebook or visitor destination publication has caused the person harmed to commit trespass in the second degree.

Thank you for the opportunity to express our support for this matter.

Very truly yours,

CASE LOMBARDI & PETTIT

A handwritten signature in black ink, appearing to read "Dennis M. Lombardi" and "David G. Brittin" joined together. The signature is fluid and cursive, with a long horizontal stroke at the end.

Dennis M. Lombardi
David G. Brittin

TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION TO S.B. NO. 1207

January 31, 2011

To: Chairperson Carol Fukunaga and Members of the Senate Committee on Economic Development and Technology:

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. 1207.

The provisions in Section 2 of this bill on page 2 states that an author, publisher shall be civilly liable for a visitor's injury or death if invites the visitor to commit a criminal offense. HAJ would like to point out that that a trespass could be either a civil trespass or a criminal trespass and this provision appears to mix the two concepts. Further, in subsection (b) on lines 19-21, it provides for immunity to the legal owner or legal occupier of the land. HAJ opposes this immunity provision but suggests as an alternative that the legislature should consider that the landowner should have a cause of action against the visitor guide publication if that is the intent of this bill. The injured party in any case should not be adversely affected by this law so that, depending upon the facts of a particular case, that person would maintain his or her rights to file a claim for any injury against any party deemed to be negligent.

The other issue is that by amending the criminal law statute, the penal code, located in Chapter 708, Hawaii Revised Statutes, it affects the prosecution of a person who is trespassing on a person's land and can result in unintended consequences.

Further, it appears that the provisions of this bill are attempting to significantly change the current law in Hawaii. This bill creates a distinction between a trespasser, an invitee and a licensee. The Hawaii Supreme Court abolished these 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.

As mentioned in the first part of this testimony, this bill basically gives immunity to a landowner. 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 this bill is not in the public interest and would be creating bad public policy.

Generally, under traditional common law, the property owner owes no duty to a trespasser whose presence on the land is unknown; nor is there a duty to discover the presence of trespassers. However, if with regard to an anticipated trespasser, the landowner may owe a duty to warn of dangerous conditions on the land that would be hidden to the person but of which the owner is aware.

This bill is a radical change in social policy and I urge this committee to do a thorough analysis before you vote to take away consumer rights.

Because of the reasons stated above, HAJ strongly opposes this bill and requests that it not pass out of this committee. Thank you for the opportunity to testify.



SENATE COMMITTEE ON ECONOMIC DEVELOPMENT
AND TECHNOLOGY

Wednesday February 9, 2011, 1:15 p.m. Room #016

SB 1207 RELATING TO TRESPASS

Holds authors and publishers of visitor websites and publications liable to readers who suffer injury or death as a result of being enticed to trespass; exempts property owners from liability.

Chair Fukunaga and Members of the Committee:

My name is Karin Carswell Guest, and I am one of the owners of Princeville Ranch on the island of Kauai. I **strongly support** SB1207.

We run eco-tours on the North shore of Kauai and are constantly dealing with Trespassers on our property. Much of the way visitors find out about areas on private lands is through visitor websites and publications. These authors are putting visitors in danger by recommending they visit these private areas. And they are disregarding the fact that it is on private lands. We are constantly asking trespassers to leave the premises and have to spend our time and resources to do this. If a trespasser is injured on our property, we run the risk of being sued and having to defend ourselves when they knowingly entered private property. The authors of these publications should absolutely be held accountable for the thousands of visitors that are put in danger from their recommendations every year.

This excerpt clearly shows the disregard for private property on our ranch by this particular author:

“The Kalihikai is short but very sweet. You can kayak it in an hour...the scenery is the best of the four...Expect to be hassled if you visit the falls in any way that doesn't bring money to the horseback company that leases the land where the falls are.” The Ultimate Kauai Guidebook 7th Edition by: Andrew Doughty. When visitor's travel unescorted they do not have the supervision and expertise afforded the people who use the same attraction but pay for the privilege and get safety briefings. Thus, many trespassers run the risk of injury and/or death and may in turn try to sue the owners.

Kipu Falls is another private area on the island that visitors hike to on a daily basis. Hundreds of people have been injured there and many people have died there. Visitors are finding out about private attractions like these because of visitor publications by irresponsible authors. And this is why I am in favor of holding authors liable if their readers suffer injury or death as a result of being enticed to trespass.

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

Princeville Ranch Adventures
P.O. Box 224
Hanalei, HI 96714
808-826-7669

From: mailinglist@capitol.hawaii.gov
To: [EDTTestimony](#)
Cc: amybclum@yahoo.com
Subject: Testimony for SB1207 on 2/9/2011 1:15:00 PM
Date: Friday, February 04, 2011 4:13:41 PM

Testimony for EDT 2/9/2011 1:15:00 PM SB1207

Conference room: 016
Testifier position: oppose
Testifier will be present: No
Submitted by: Amy Clum
Organization: Individual
Address: 55 Park Street Carroll, OH 43112
Phone: 740-756-0707
E-mail: amybclum@yahoo.com
Submitted on: 2/4/2011

Comments:

I respectfully oppose SB1207 as I believe this is in direct opposition to the freedom of speech we are entitled to under the first amendment. Thank you.

From: mailinglist@capitol.hawaii.gov
To: [EDTTestimony](#)
Cc: blackink329@gmail.com
Subject: Testimony for SB1207 on 2/9/2011 1:15:00 PM
Date: Wednesday, February 02, 2011 1:46:13 PM

Testimony for EDT 2/9/2011 1:15:00 PM SB1207

Conference room: 016
Testifier position: oppose
Testifier will be present: No
Submitted by: Brad Williamson
Organization: Individual
Address: 352 Aina Lani Place Kapaa, HI 96746
Phone: 808-651-5519
E-mail: blackink329@gmail.com
Submitted on: 2/2/2011

Comments:

Aloha Senators,

I am opposed to SB1207 and SB1208 that are up for review on February 9th, 2011.

I believe that the nature of the way these bills are written is much more far reaching than anyone realizes. ANYTHING that is published about Hawaii can ENTICE someone to visit a spot. If a newspaper publishes an article about someone being hurt or killed at a spot, and a person reading it then becomes curious, they could have been ENTICED by the article and thereby causing the newspaper to be liable if said person becomes hurt. If a movie shows a picture of a site in its promotions, it can be enticing visitors to see that site and would be liable. If a history book writes about a site it could leading someone to visit that place and be liable. The list is endless.

I believe that HB520 already protects landowners and these bills only serve to end ANYONE publishing anything about Hawaii for fear of litigation.

These bills will cause countless ugly NO TRESPASSING signs to be placed up by everyone desiring to do so and make places seem private that are not legally so. It will make Hawaii an ugly and unwelcoming place for everyone.

The Hawaii economy cannot afford another hit in the tourism belt. These bills are a direct hit to Hawaii's financial future.

Sincerely,

Brad Williamson

From: mailinglist@capitol.hawaii.gov
To: [EDTTestimony](#)
Cc: pennysfh@hawaii.rr.com
Subject: Testimony for SB1207 on 2/9/2011 1:15:00 PM
Date: Wednesday, February 02, 2011 10:43:27 AM

Testimony for EDT 2/9/2011 1:15:00 PM SB1207

Conference room: 016
Testifier position: support
Testifier will be present: No
Submitted by: Penny Levin
Organization: Individual
Address: Wailuku, Maui
Phone:
E-mail: pennysfh@hawaii.rr.com
Submitted on: 2/2/2011

Comments:

Aloha Honorable Committee Members;

Trepass onto private property has risen to an unprecedented level in Maui. Guides such as "Maui Revealed", which we call "Maui Reveled" here on Maui, blatantly encourage trespass. Tourists park their cars along the narrow road to Hana in dangerous places to trespass on watershed conservation lands. Well beyond the potential harm to trespassers, the damage caused by trespassers on private (and public) property comes in the form of broken fences, soil erosion from over use of pathways or creation of new trails in unstable areas, crop, tool and equipment loss from theft or malicious damage. These are the costs that private (and public) land owners endure at the hands of such guides and websites. The loss of privacy and safety for resident families at all hours is tremendous; unknown people wandering through private property is a serious concern for the safety of our children.

There are few remaining places where locals can gather with their families any more without being exposed to wandering tourists. Every community needs down time from the tourist industry. That helps us all preserve the balance of aloha. The invitation to visit private places should come from within, not from outside. This bill will preserve the last few places we have and protect us in our own homes.

Please support SB1207.

Mahalo for this opportunity to testify.

Aloha,

I am concerned about Hawaii's proposed HB548, HB552, SB1207 and SB1208. I truly believe our elected representatives mean well in protecting all constituencies and sincerely appreciate the opportunity and ability to express my point of view. I believe the direction our state is currently headed could be profoundly damaging and result in isolating Hawaii from books, magazines, motion pictures, television, libraries and, most importantly, all classrooms at all ages and levels of education – in and outside Hawaii. The bills, as I understand them, could easily result in the following scenarios. This is not hyperbole. This is pure logic since someone may choose to visit a site referred to and none of the publishing below specifically indicated, "If it is necessary to enter private property to access this site please do not visit this location."

EDUCATION/TEXT BOOKS: Publishers of text books from as early as elementary school to university textbooks will most likely cease printing anything with any reference to anything or anyone in Hawaii out of fear a student or student caregiver or educator may be inspired (enticed?) to visit a location referred to in the text. This includes publications of legal, medical, archeological, sociological, artistic, scientific, cultural, etc. research. These bills will easily result in no references to Hawaii whatsoever in any classroom setting that is published after 2011.

LIBRARIES: No publisher in their right mind will provide publications to libraries: public, private, institutional or educational that make any reference to persons, places or events in Hawaii's past, present or future for the same reasons listed above.

MOTION PICTURES/TELEVISION: Immediate cessation of all filming in Hawaii. No production company or television studio in the U.S., Canada or over seas will create films or television programming in Hawaii or include Hawaii footage or permit any dialogue to have any reference to Hawaii since scripts begin with a publisher. That means there will no longer be any scripts available.

NEWSPAPERS/MAGAZINES/SPORTS REPORTING/MAPS/SITE SIGHTSEEING GUIDES will be forced to cease to report on activities, events and the incredibly beautiful and impressive sites/beaches/etc. All thoughts of profit are eliminated when weighed against the astonishing liability.

TOURISM ?: "Excuse me but we're hoping to get married in Hawaii and can't find any written material or web sites that help us plan our wedding or let us know what sort of opportunities there exist."

BOOKSTORES: Publisher most likely to stop providing bookstores with any new publication (fiction, non-fiction, reference, photography, historical, etc.) that has any reference to Hawaii. The financial risk is too great.

FREE-LANCING: No writer, photographer, historian or archivist will have the ability to obtain publishers, magazines, newspapers, etc. to consider them if there is any reference whatsoever to Hawaii.

This piece of legislation could easily be perceived as the most subtle yet devious form of censorship imaginable. Private property owners are already protected from liability. This will cause unimaginable financial loss and astonishing humiliation as we legislate the inability to write about or refer to this incredibly rich and beautiful Island state.

ME: I'm a retired theatre professor with a script soon to be in search of a publisher. It's a 90-minute comedy about the history of Hawaii. Three actors portray nearly 60 characters bringing the past 1700 years of Hawaii's history to today. A potential resource for all, especially Island visitors, to learn about

Hawaii while laughing most of 90 minutes. No publisher in his or her right mind will consider such a script. No new plays will be written, staged or promoted that have to do with Hawaii. A reader or audience member may wish to visit a location referred to in my play and if they end up getting hurt should they cross privately owned land to reach this destination – my publisher can be sued even if the script did not say, *“You will need to cross this private property to have access to this beach.”*

Again, I thank you for this opportunity and if any of our elected officials responsible for passing this legislation disagree with me I would hope they would find someone from each industry I refer to testify that I am sorely mistaken. Mahalo Nui Loa...

From: mailinglist@capitol.hawaii.gov
To: [EDTTestimony](#)
Cc: jguest@hawaii.rr.com
Subject: Testimony for SB1207 on 2/9/2011 1:15:00 PM
Date: Monday, February 07, 2011 7:49:47 PM

Testimony for EDT 2/9/2011 1:15:00 PM SB1207

Conference room: 016
Testifier position: support
Testifier will be present: No
Submitted by: JEFFREY GUEST
Organization: Individual
Address:
Phone:
E-mail: jguest@hawaii.rr.com
Submitted on: 2/7/2011

Comments:

From: mailinglist@capitol.hawaii.gov
To: [EDTTestimony](#)
Cc: galealoha@gmail.com
Subject: Testimony for SB1207 on 2/9/2011 1:15:00 PM
Date: Monday, February 07, 2011 7:50:24 PM

Testimony for EDT 2/9/2011 1:15:00 PM SB1207

Conference room: 016
Testifier position: support
Testifier will be present: No
Submitted by: Gale Carswell
Organization: Individual
Address:
Phone:
E-mail: galealoha@gmail.com
Submitted on: 2/7/2011

Comments:

From: mailinglist@capitol.hawaii.gov
To: [EDTTestimony](#)
Cc: afrancokaupo@gmail.com
Subject: Testimony for SB1207 on 2/9/2011 1:15:00 PM
Date: Tuesday, February 08, 2011 1:07:58 PM

Testimony for EDT 2/9/2011 1:15:00 PM SB1207

Conference room: 016
Testifier position: support
Testifier will be present: No
Submitted by: Alex Franco
Organization: Individual
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Submitted on: 2/8/2011

Comments:

Dear Chair Fukunaga and members of the Senate Committee on Economic Development & Technology,

Testifying as a private citizen, I oppose Section 2 of SB 1207.

I am concerned about the chilling effect that this bill would have on freedom of the press and the unintended consequences that may affect the economy.

Why should trespassers be given legal standing to sue anyone? Trespassers should be responsible for their own actions.

If a magazine publishes an article about a homeowner's fantastic remodeled cliffside gazebo and a reader decides to trespass to check it out for himself but falls down the cliff, should the trespasser be allowed to sue the magazine?

If a website writes in admiration about efforts by a ranch to save specimens of a threatened species, such as the Hawaiian hoary bat, and a drunk reader decides to trespass on the ranch to see the bats for himself but gets injured, should the trespasser be permitted to sue the website?

National and local magazines, bloggers and websites might decide not to write about Hawai'i attractions at all in order to avoid possible exposure to liability. This would devastate the visitor industry.

I humbly suggest that Section 2 be deleted in its entirety.

Thank you very much for your consideration.

Carlton Saito