

**TESTIMONY ON BEHALF OF THE HAWAII ASSOCIATION FOR JUSTICE
(HAJ) REGARDING S.B. NO. 329, SD1**

DATE: Thursday, March 14, 2013

TIME: 5:30 pm

To: Chairman Angus McKelvey and Members of the House Committee on Consumer Protection and Commerce:

This testimony is being submitted on behalf of the Hawaii Association for Justice (HAJ) regarding S.B. No. 329 SD1, Relating to Animals, as presently drafted.

The concerns regarding immunity from civil liability relate to 1) the type of claims for which immunity is sought; and 2) the type of nonprofit operation to which this immunity will apply.

The bill itself is so broadly worded as to allow any not-for-profit operation to engage in negligent or unreasonable conduct of any kind without responsibility or accountability so long as it provides shelter or subsistence for animals. Only conduct amounting to gross negligence or wanton conduct is prohibited.

First, if there is a specific liability concern, such as fear that an abused or starved animal may die while in the care of a shelter, that concern should be identified and, if appropriate, an exemption crafted to specifically address that concern. As it currently reads, someone driving to buy pet food that kills a pedestrian in a crosswalk could be immune because the death could be said to be related to providing subsistence for animals. Likewise, someone walking an abused rescue pitbull, which has not yet been rehabilitated, next to a group of children playing in a park would possibly be immune if a child is seriously bitten. It is simply not clear whether this measure is aimed at limiting liability for the animal which is being cared for, injury or death to members of the general

public, or ancillary but related activities such as driving an animal to the veterinarian or to pick up animal food. The scope of the immunity is far too broad and unlimited as currently written.

Second, it is not clear what kinds of not-for-profit operations are intended to benefit from this measure. Also, individuals feeding feral cats, pigs or pigeons may also qualify so long as no profit making is involved. This bill specifically applies to “any animal” and can therefore apply to feral animals that are unwanted and destructive.

The unintended consequences of this bill are far reaching because of its very broad language. For example, someone feeding and providing shelter to feral cats in a residential neighborhood would be immune from a civil nuisance suit by neighbors to end the nuisance. Neighbors of someone feeding feral pigeons that were bombarding neighborhood homes with dropping will lose the opportunity to file a civil nuisance claim to stop the nuisance and end the public health hazards associated with pigeon droppings. Someone feeding feral pigs will be immune from damages those pigs cause to neighboring properties. Someone providing shelter to vicious dogs would have no responsibility to prevent them from attacking neighborhood children.

The dangers involved in helping rescue animals can vary greatly. It is one thing to house unwanted bunnies but quite another to handle abused rescue pit bulls. Any limitation of liability must consider the scope of the danger, and therefore need for adequate safety precautions and accountability; as well as the noble effort to provide shelter and subsistence for those animals in need of help. The degree of caution must reflect the degree of the danger. Blanket immunity does not serve that purpose.

For these reasons, HAJ wanted to submit these comments regarding this measure as drafted and asks that it be at least amended to limit the scope of the immunity to the specific concerns which gives rise to this bill. HAJ thanks the committee for the opportunity to submit these comments on this measure.

kawakami2 - Rise

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 13, 2013 9:42 AM
To: CPCtestimony
Cc: felinitous@yahoo.com
Subject: Submitted testimony for SB329 on Mar 14, 2013 17:30PM

SB329

Submitted on: 3/13/2013

Testimony for CPC on Mar 14, 2013 17:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Mary James	Individual	Support	Yes

Comments: I have been involved in animal rescue for many years and have worked with numerous nonprofits dedicated to improving the lives of pets and other animals. These nonprofits are run entirely on donations with all the work performed by volunteers. One of the major expenses of these organizations is the cost of supplies to help the animals. Unfortunately, many businesses who supply pet food and other supplies, are prevented from donating many of these supplies to the nonprofits because of the possibility of being held liable for unforeseen injuries related to the donations. For example, a great amount of pet food is lost because it cannot be sold once the expiration date has passed - even by one day. Nearly 100% of such food is absolutely healthy. If the businesses who must throw such food away were protected from liability, it would not only provide animal rescue nonprofits with additional supplies, it will also prevent a large amount of unnecessary waste. This bill will address this waste and help nonprofits with no cost to businesses or others. In 1994, the Legislature addressed a similar problem with donations made to charitable or nonprofit organizations that provide shelter or subsistence to needy persons. That year, the Legislature passed Act 250 which was codified as section 663-10.6, Hawaii Revised Statutes (HRS). The language in S.B. No. 329 is nearly identical to section 663-10.6, HRS, and will help nonprofit organizations working for animal welfare to do more. This bill, again similar to section 663-10.6, HRS, will also provide protection from liability for charitable and nonprofit organizations that provide shelter and subsistence to animals. Thank you for the opportunity to testify on this measure.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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