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**TESTIMONY OF SCOTT E. ENRIGHT
CHAIRPERSON, BOARD OF AGRICULTURE**

BEFORE THE HOUSE COMMITTEE ON WATER & LAND

**FEBRUARY 9, 2018
10:00 A.M.
CONFERENCE ROOM 325**

**HOUSE BILL NO. 2017 HD1
RELATING TO AGRICULTURAL LANDS**

Chairperson Yamane and Members of the Committee:

Thank you for the opportunity to testify on House Bill No. 2017 HD1, relating to agricultural lands. The bill expands the definition of “agricultural land” to include land that is four acres or less, with an unspecified amount per year profit. The department has concerns with this bill and offers comments.

The department recognizes the concerns of farmers regarding limited liability protection. The department believes that the intent of the bill is to exclude “gentlemen farms” in which the chief source of income is not derived from farm generated income. Based on the 2012, Census of Agriculture Hawaii (Table 65 – Summary by Market Value of Agricultural Product Sold, paged 90-91), of the total 7,000 farms statewide, there were 4,311 farms with one to nine acres, with income (not profit) of \$1,000 to \$99,999 from the sale of agricultural products. It is difficult to determine a dollar amount profit for a farming operation with one to four acres.

Thank you for the opportunity to testify on this measure.



HB-2017-HD-1

Submitted on: 2/8/2018 1:34:53 PM

Testimony for WAL on 2/9/2018 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Rachele Lamosao	Hawaii Farm Bureau Federation	Support	Yes

Comments:

**TESTIMONY OF ROBERT TOYOFUKU AND NAHELANI WEBSTER ON
BEHALF OF THE HAWAII ASSOCIATION FOR JUSTICE (HAJ) IN
OPPOSITION TO H.B. NO. 2017, HD1**

Date: Friday, February 9, 2018

Time: 10:00 am

Rm: 325

To: Chairperson Ryan I. Yamane and Members of the House Committee on Water & Land.

We are presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in OPPOSITION to H.B. No. 2017, HD1 relating to Agriculture.

Large agricultural parcels of 4 acres or more have been given immunity from liability to trespassers. This measure seeks to extend the immunity to parcels of less than 4 acres as well.

HAJ opposes this measure because the four-acre requirement for immunity represented a fair balancing of property owner rights and obligations and remains sound public policy today. There are fundamental differences between large agricultural operations and small farming plots relating to both their size and types of persons who may be upon the property. As a general matter, Hawaii's public policy requires all landowners to keep their property in reasonably safe condition for those anticipated to be upon the property. For the average homeowner this is both necessary to protect visitors and relatively simple due to the small size of most residential yards. Large agricultural operations however can encompass thousands of acres of land making both the discovery and fixing of dangerous conditions impractical, if not impossible.

The decision to apply the immunity to farmland more than 4 acres was a considered decision weighing factors of location and difficulty of safely maintaining

property against the need to protect and promote safety for the general public, particularly our children. It is important to keep in mind that the word “trespasser” has a popular connotation of an evil person who is intentionally violating property rights with a 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. Children who play in an open field or take a short cut to school through the corner of a flower farm are technically trespassers. The general public who use long established paths through agricultural lands to the beach are trespassers. The grandmother who, while waiting for a bus, stands under a fruit tree at the edge of a fruit farm bordering the street is a trespasser. Most of us are from time to time unintentional or innocent trespassers who have no criminal intent.

It may be very difficult, if not impractical, to inspect, discover and maintain large agricultural or pasturelands in rural or remote locations. It is not as difficult with a 20,000 sq. ft. pikake farm in Kaimuki. Large agricultural tracks are more likely found in rural areas that are less densely populated and away from school children. There are many smaller farms in highly urban areas, which naturally attract children or are so close to homes that it is reasonable to expect interaction with the neighbors. If for example, a small farm is located next to an elementary school, it is reasonable to expect that children will occasionally trespass to retrieve an errant ball or frisbee. An open area of a small- unfenced papaya farm in the middle of a Kaneohe housing development will certainly attract children who have no other open space to play. These children are technically trespassers, but certainly have no criminal intent and should not be treated with the disdain appropriate to real criminals.

A more recent issue for large operations is the proliferation of internet websites and tourist guides that publicize waterfalls, scenic lookouts and beaches that are located within or which are reached by crossing (technically trespassing) former sugar and pineapple plantation lands. Although these places have long been popular with locals, the sheer impact of hordes of tourists created unique maintenance and liability issues that were addressed by limiting liability.

The current law strikes a reasonable balance of all relevant factors. If there does indeed develop a crisis of lawsuits by trespassers against small farming operations, those lawsuits can be examined and a focused solution formulated to address the situation. This measure is not necessary at this time and has many unintended consequences for ordinary citizens.

Thank you for allowing us to testify on this measure in OPPOSITION.
Please feel free to contact me should you have any questions or desire additional information.

LATE

HB-2017-HD-1

Submitted on: 2/8/2018 7:04:02 PM

Testimony for WAL on 2/9/2018 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Dylan Armstrong		Support	No

Comments: