

**TESTIMONY OF EVAN OUE ON BEHALF OF THE HAWAII  
ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION OF  
HB 12**

Date: Tuesday January 28, 2024

Time: 9:00 a.m.

My name is Evan Oue and thank you for allowing me to submit testimony on behalf of the Hawaii Association for Justice (HAJ) in **STRONG OPPOSITION** to **HB 12 - RELATING TO TORT LIABILITY**. HAJ has serious concerns with the immunity granted under this measure for landowners.

Chapter 520 was enacted to give private landowners certain protections from liability when making their lands available for recreational purposes without charging a fee. Under the current law, Hawaii Revised Statutes (HRS) § 520-5(2), does not allow immunity for landowners who charge those who enter their land for recreational purposes or to those who enter their land without permission or consent. HAJ has always maintained that it is not prudent to alter the basic public purpose of HRS Chapter 520.

HAJ recognizes that the intent of this measure to incentivize landowners to make private lands available to public use. However, to provide absolute immunity to landowners who allow the public to enter their property for recreational use without permission is bad public policy. There is no justification for providing immunity to landowners that do not invite or permit the public to be on their land.

There is also no justification to absolutely prohibit a person who is injured while on the premises from having a right to file a lawsuit. That language is too broad.

HAJ is also concerned with the language contained with the assumption of risk section of the measure. Hawaii has specifically **ABOLISHED** the assumption of risk defense and has

adopted the concept of comparative fault for determining the plaintiff's level or degree of responsibility.

Furthermore, HRS § 663-1.54(a) states “**Any person who owns or operates a business providing recreational activities to the public**, such as, without limitation, scuba or skin diving, sky diving, bicycle tours, and mountain climbing, **shall exercise reasonable care to ensure the safety of patrons and the public, and shall be liable for damages resulting from negligent acts or omissions of the person which cause injury.**” Additionally, HRS § 663-1.54(c) states “[t]he determination of whether a risk is inherent or not is for the trier of fact. As used in this section an “inherent risk”:

- (1) Is a danger that a reasonable person would understand to be associated with the activity by the very nature of the activity engaged in;
- (2) Is a danger that a reasonable person would understand to exist despite the owner or operator's exercise of reasonable care to eliminate or minimize the danger, and is generally beyond the control of the owner or operator; and
- (3) **Does not result from the negligence, gross negligence, or wanton act or omission of the owner or operator.**”

The statute does not, and was never intended to, shield landowners that operate a commercial recreational activity from their own negligence and careless operation which causes injury or death to their customers. The statutes which provide for a waiver by the provider specifically cover these concerns because the statute (and related caselaw) make it clear that when a person signs a waiver for a recreational activity, the waiver protects the landowner/business owner/rec activity provider against any inherent risks associated with the activity.

The examples of risks assumed by a participant in the proposed bill go well beyond anything inherent, such as variations in terrain, trails paths, or roads. Moreover, the definition of “recreational purpose” is amended to include “spectating” as a use which the risk assumption and immunity could apply. Under this measure, a recreational owner will have blanket immunity to not maintain their property. In other words, the landowner will have NO obligation to maintain their property regardless of how bad the conditions become due to the immunity provided under this measure.

Accordingly, providing absolute immunity to landowners is bad public policy and will reduce public safety. Thank you very much for allowing me to testify in OPPOSITION of this measure. Please feel free to contact me should you have any questions or desire additional information.

**HB-12**

Submitted on: 1/26/2025 5:11:46 PM

Testimony for WAL on 1/28/2025 9:00:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>         |
|---------------------|---------------------|---------------------------|------------------------|
| Chase Cavitt        | Individual          | Support                   | Written Testimony Only |

Comments:

I am writing in support of HB12. I feel this could encourage more safe hunting access for Hawaii citizens and would be helpful with those who own land and are fearful of allowing access to their land for recreational purposes in fear of being held liable for many potential issues of misconduct by those allowed on the land. This also has many other potential factors that help land owners liability wise in an era where criminals and people at fault are able to be sue happy and destroy others lives with frivolous lawsuits. Cattle lands are being destroyed by over grazing of axis deer on Maui and this could help encourage more safe hunting on private lands to help reduce the amount of deer that are harming the industry. I support HB12 and respectfully ask you to consider passing this bill.

Mahalo,

Chase Cavitt

**HB-12**

Submitted on: 1/26/2025 5:56:17 PM

Testimony for WAL on 1/28/2025 9:00:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>            |
|---------------------|---------------------|---------------------------|---------------------------|
| Michael I Rice      | Individual          | Support                   | Written Testimony<br>Only |

Comments:

I stand in SUPPORT of this bill as a means to allow property owners to make better use of their land without needing to worry about frivolous lawsuits from those who may engage in such activities on their property.

**HB-12**

Submitted on: 1/26/2025 9:16:50 PM

Testimony for WAL on 1/28/2025 9:00:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>         |
|---------------------|---------------------|---------------------------|------------------------|
| Ryan Arakawa        | Individual          | Support                   | Written Testimony Only |

Comments:

This is a good bill that encourages greater use of the wonderful outdoor activities that Hawaii is known for. People need to take personal responsibility for their actions and landowners need legal assurances against frivolous legal actions from allowing people access to their property.

**HB-12**

Submitted on: 1/26/2025 11:20:16 PM

Testimony for WAL on 1/28/2025 9:00:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>    |
|---------------------|---------------------|---------------------------|-------------------|
| Todd Yukutake       | Individual          | Support                   | Remotely Via Zoom |

Comments:

I support HB12 for a several reasons:

1. To increase hiking opportunities. This will allow for more hiking trails and possibly open up illegal trails for legal use. Hiking is a healthy activity for all to enjoy.
2. Increased hunting lands. This is especially true for Maui which has an overpopulation of deer. Most land on Maui is privately owned and owners do not allow hunters to remove the deer even if it destroys their land. Private landowners are afraid of liability if a visitor gets hurt. Passing this law will open up more private lands for hunting to aid in controlling the deer population.
3. Firing ranges. There is a shortage of firing ranges on the islands even though land may be abundant. Passing HB12 may allow landowners to allow firearms practice and training which improves safety.

Please support HB12.

Mahalo

Todd Yukutake  
toddykutake@gmail.com  
808-255-3066

**HB-12**

Submitted on: 1/27/2025 8:33:44 AM

Testimony for WAL on 1/28/2025 9:00:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>            |
|---------------------|---------------------|---------------------------|---------------------------|
| Randy Cheung        | Individual          | Support                   | Written Testimony<br>Only |

Comments:

I support this bill in the hopes that it will increase the opportunities for outdoor recreational activities.

**HB-12**

Submitted on: 1/27/2025 11:27:44 AM

Testimony for WAL on 1/28/2025 9:00:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>         |
|---------------------|---------------------|---------------------------|------------------------|
| Steve Robertson     | Individual          | Support                   | Written Testimony Only |

Comments:

This is a good bill for the citizens of Hawaii. In Maui county there are too many deer and government is spending millions to reduce their numbers. Most of the deer are found on private lands, and those ranches do not allow public access due to liability concerns. The coverage proposed in this bill would encourage landowners to open up access to hunters to do the job and save the meat, instead of just leaving the dead deer to rot as happens all too often now.

**HB-12**

Submitted on: 1/27/2025 12:58:02 PM

Testimony for WAL on 1/28/2025 9:00:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>         |
|---------------------|---------------------|---------------------------|------------------------|
| Yvonne Alvarado     | Individual          | Support                   | Written Testimony Only |

Comments:

I, Yvonne Alvarado is in Support of Bill HB12

**HB-12**

Submitted on: 1/27/2025 1:46:10 PM

Testimony for WAL on 1/28/2025 9:00:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>            |
|---------------------|---------------------|---------------------------|---------------------------|
| Gavin Lohmeier      | Individual          | Support                   | Written Testimony<br>Only |

Comments:

I support this bill to protect land owners from lawsuits by persons participating in recreational activities on land owners' land

sincerely,

Gavin Lohmeier

**HB-12**

Submitted on: 1/27/2025 3:10:13 PM

Testimony for WAL on 1/28/2025 9:00:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>         |
|---------------------|---------------------|---------------------------|------------------------|
| Bronson Teixeira    | Individual          | Support                   | Written Testimony Only |

Comments:

Aloha, I stand in strong support of this bill. Mahalo.

**HB-12**

Submitted on: 1/27/2025 3:33:51 PM

Testimony for WAL on 1/28/2025 9:00:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>         |
|---------------------|---------------------|---------------------------|------------------------|
| Joel Berg           | Individual          | Support                   | Written Testimony Only |

Comments:

If this bill would become law it would make outdoor activities much easier. Please pass it.

**HB-12**

Submitted on: 1/27/2025 7:50:26 PM

Testimony for WAL on 1/28/2025 9:00:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>         |
|---------------------|---------------------|---------------------------|------------------------|
| Fred Delosantos     | Individual          | Support                   | Written Testimony Only |

Comments:

Please support HB12.

we need to make it easier for landowners to open up their land for hunting. we have lots of feral pigs, and invasive species deers, other species, that need to be controlled. Hunters will be happy to assist in that effort to protect Hawai'i's native ecosystem. Basic wildlife management, mangement of natural resources.

**HB-12**

Submitted on: 1/27/2025 8:03:56 PM

Testimony for WAL on 1/28/2025 9:00:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>         |
|---------------------|---------------------|---------------------------|------------------------|
| Tracy Gillard       | Individual          | Support                   | Written Testimony Only |

Comments:

I support this bill as everyone needs to start taking responsibility for their action. If you did something stupid on got hurt on someone's property, that is your fault, not the owner of the properties fault.

**HB-12**

Submitted on: 1/27/2025 8:43:12 PM

Testimony for WAL on 1/28/2025 9:00:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>         |
|---------------------|---------------------|---------------------------|------------------------|
| Abraham Antonio sr  | Individual          | Support                   | Written Testimony Only |

Comments:

Support

**HB-12**

Submitted on: 1/28/2025 9:43:02 AM

Testimony for WAL on 1/28/2025 9:00:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>         |
|---------------------|---------------------|---------------------------|------------------------|
| Angel Becerra       | Individual          | Support                   | Written Testimony Only |

Comments:

Aloha chair, vice chair, and members of the committee,

I am Angel Becerra, a local Maui resident and subsistence fisherman and hunter. I support HB12 for a few reasons. As it was mentioned in the hearing today, January 28th, 2025, Maui has a large population of axis deer that have become a nuisance for some, yet subsistence for many others. Currently, the few public hunting zones that allow hunters with rifles are very limited. One area found in West Maui in Olowalu referred to by the state and labeled on public hunting maps as "Zone A," is completely land locked by private land making that so called "public hunting area," only accessible by helicopter via special use permit and lots of money.

Another partnership that was established between the DHHL in Waiohuli, Maui, and the DOFAW has a system in place that requires all hunter's to call in on Mondays between 9:30-10:30 am for a access permit to the Waiohuli homestead hunting area. Yesterday, I called 511 times and was only met with busy signals and voicemails.

Maui does NOT have an axis deer problem, we HAVE a land accessibility problem that HB12 CAN solve!

Please support this bill. Mahalo.

**HB-12**

Submitted on: 1/28/2025 9:49:50 AM

Testimony for WAL on 1/28/2025 9:00:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>         |
|---------------------|---------------------|---------------------------|------------------------|
| David E Shormann    | Individual          | Support                   | Written Testimony Only |

Comments:

This is a good bill to protect landowners. This will help preserve the life of the land by allowing more hunter access to manage excess populations of axis deer, sheep, goats and pigs. The life of the land is perpetuated in righteousness. Mahalo.

**HB-12**

Submitted on: 1/28/2025 10:30:56 AM

Testimony for WAL on 1/28/2025 9:00:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>         |
|---------------------|---------------------|---------------------------|------------------------|
| Samuel Webb         | Individual          | Support                   | Written Testimony Only |

Comments:

I support this Bill, because living on a island with one Public Range and few private groups hosting classes and training.It would protect land owners from stupid lawsuits and would open up more land for safe weapon handling training.