

**TESTIMONY OF NAHELANI WEBSTER ON BEHALF OF THE HAWAII
ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION TO H.B. 101**

Date: Tuesday, February 2, 2021

Time: 9:00 AM

To: Chair David A. Tarnas and Members of the House Committee on Water & Land:

My name is Nahelani Webster and I am presenting this testimony on behalf of Hawaii Association for Justice (HAJ) in OPPOSITION to H.B. 101, relating to Tort Liability.

Chapter 520, known as the Recreational Use law, already grants private landowners limited liability from injuries and deaths that occur on private property if they open their lands to the public for recreational use at no charge. The purpose of the recreational use law already satisfies the intended purpose of the proposed legislation; to encourage private landowners to open lands and access to water to the public.

Adding language stating there is “no cause of action” is confusing. If the landowners actions are considered wilful or malicious, or if their house guest is injured, then they *would* have a cause of action under the exceptions listed in HRS 520-5. The current language in HRS 520 already provides landowners with protections from liability as well as stating clearly that liability depends on the circumstances and whether they fall into one of the exceptions.

When HRS 520 was enacted the legislature recognized that it was important to strike a balance between limiting liability to encourage public access to land and water areas for recreation, and protecting against conduct by an owner that is wilful or malicious. It is important that the interest of recreational use not outweigh the interest of protecting the public against unreasonably dangerous conditions. Sound public policy requires that all landowners, private and governmental exercise reasonable care in maintaining their property in a safe condition for the safety of the general public.

Amending the statute to allow for attorneys fees and costs would only serve to chill litigation against landowners who engaged in a wilful and malicious failure to warn against a dangerous condition for which the owner knowingly creates. This creates public policy which would place the public at greater risk. Furthermore, parties are already protected by the Hawaii Rules of Civil Procedure from frivolous suits (Rule 11, 54 (fees and costs upon judgment)).

If individuals are having difficulty getting onto private property because landowners claim fear of liability, then it is the best alternative to educate them of the already existing protections under the Recreational Use Statute. In addition, courts have already recognized a landowner's liability as limited, and therefore any further clarification to motivate landowners to allow people on their land for recreational purposes can be provided from existing case law.

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

LATE

HB-101

Submitted on: 2/1/2021 10:02:27 AM

Testimony for WAL on 2/2/2021 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Denver Saxton Coon	Ocean Tourism Coalition	Support	No

Comments:

The Ocean Tourism Coalition supports HB101. Some of the most beautiful sites and areas around the islands are often only accessible by crossing private property. While many landowners are willing to allow the public to cross the land to reach these sites, fewer and fewer landowners will be willing to do so if they are threatened with litigation. Hawaii is an amazing place to live and visit, but many of its activities are not without risk. HB101 will help ensure access for both local people and visitors alike.

LATE

HB-101

Submitted on: 2/1/2021 10:07:49 AM

Testimony for WAL on 2/2/2021 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
James E. Coon	Trilogy Excursions	Support	No

Comments:

The intent of this bill should also apply to Ocean Recreational activities.

HB-101

Submitted on: 1/30/2021 3:52:57 PM

Testimony for WAL on 2/2/2021 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Eric Kaneshiro	Individual	Support	No

Comments:

I support this bill if it may open up more private hunting lands.

HB-101

Submitted on: 1/31/2021 6:53:37 PM

Testimony for WAL on 2/2/2021 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
George Pace	Individual	Support	No

Comments:

Please pass this bill.

HB-101

Submitted on: 1/31/2021 8:58:51 PM

Testimony for WAL on 2/2/2021 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Joel Berg	Individual	Support	No

Comments:

Support 101

Animal overpopulation leads to horrific deaths from starvation and disease to our local herds. Please pass this to help remove barriers to humane hunting practices and herd management. Use the whole buffalo!

HB-101

Submitted on: 1/31/2021 9:16:22 PM

Testimony for WAL on 2/2/2021 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
mitchell weber	Individual	Support	No

Comments:

I SUPPORT HB101,

Private land owners should have more protections in place to ensure they are not held liable to damages occurring on their property.

regards,

Mitchell Weber

HB-101

Submitted on: 1/31/2021 9:41:12 PM

Testimony for WAL on 2/2/2021 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jacob Holcomb	Individual	Support	No

Comments:

Hiking trails are full, and we need more open space. Encouraging landowners to share their resources without the threat of liability would benefit the health of the state population.

HB-101

Submitted on: 1/31/2021 10:04:26 PM

Testimony for WAL on 2/2/2021 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Todd Yukutake	Individual	Support	No

Comments:

I SUPPORT HB101

I would like to have more hunting and hiking lands available but they are currently off limits due to landowners liability fears. This bill would create a lot of opportunities in Hawaii for outdoor recreation while fending off frivolous lawsuits.

Mahalo.

Todd Yukutake
Toddyukutake@gmail.com
Resident of House District 33

HB-101

Submitted on: 2/1/2021 8:13:11 AM

Testimony for WAL on 2/2/2021 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Zachary LaPrade	Individual	Support	No

Comments:

This bill protects landowners and expands use of private property.