

DAVID Y. IGE
GOVERNOR OF
HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the Senate Committee on
PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS**

**Thursday, February 11, 2021
1:30 PM
State Capitol, Via Videoconference**

**In consideration of
SENATE BILL 568
RELATING TO TORT LIABILITY**

Senate Bill 568 proposes to provide liability protections for public and private landowners who expressly allow access to land and waters for recreational use. **The Department of Land and Natural Resources (Department) supports this measure and provides the following comments.**

The Department recognizes and upholds the legal exercise of citizen rights on public lands managed by the Department. The Department notes that under Hawai'i state law, we have a duty to regulate certain activities on public lands in the public's interest. The Department may require permits, licenses, and/or lease agreements, which often include indemnification, for certain activities to fulfill statutory and constitutional duties. Thus, the Department is supportive of this measure provided that its passage does not replace or adversely impact the Department's authority to regulate certain activities on public lands managed by the Department, as required under Hawai'i state law.

Thank you for the opportunity to comment on this measure.

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

SB-568

Submitted on: 2/10/2021 1:20:09 PM

Testimony for PSM on 2/11/2021 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kathryn Stanaway	Testifying for DLNR-DOFAW	Support	No

Comments:

I am available for questions. Please allow me Zoom access. Thank you.

**TESTIMONY OF NAHELANI WEBSTER ON BEHALF OF THE HAWAII
ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION TO S.B. 568**

Date: Tuesday, February 11, 2021

Time: 1:30 PM

To: Chair Clarence Nishihara and Members of the Senate Committee on Public Safety, Intergovernmental, and Military Affairs:

My name is Nahelani Webster and I am presenting this testimony on behalf of Hawaii Association for Justice (HAJ) in OPPOSITION to S.B. 568, 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 willful or malicious, or if their houseguest is injured, then they would have a cause of action under the exceptions listed in HRS 520-5. Protections from liability already exist under HRS 520, which also states clearly that liability depends on the circumstances and whether they fall into one of the exceptions.

Amending the statute to allow for attorneys fees and costs would only serve to chill litigation against landowners who engaged in a willful 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).

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.

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.

SB-568

Submitted on: 2/8/2021 12:51:30 PM

Testimony for PSM on 2/11/2021 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Philip T. Rapoza	Individual	Support	No

Comments:

I support

SB-568

Submitted on: 2/10/2021 4:08:39 AM

Testimony for PSM on 2/11/2021 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Abraham Antonio sr	Individual	Support	No

Comments:

I support this bill land ownership should not be responsible for trespassers this bill should pass thanks you

SB-568

Submitted on: 2/10/2021 9:00:07 AM

Testimony for PSM on 2/11/2021 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Stanley Mendes	Individual	Support	No

Comments:

I strongly support SB568 land owners should not be liable.

SB-568

Submitted on: 2/10/2021 9:50:06 AM

Testimony for PSM on 2/11/2021 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Marcus Tanaka	Individual	Support	No

Comments:

I support more laws that help land owners become less liable if someone gets hurt on their property.

SB-568

Submitted on: 2/10/2021 10:21:50 AM

Testimony for PSM on 2/11/2021 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Ryan Arakawa	Individual	Support	No

Comments:

I **support** this bill. Changes that will open more land to the public for recreation is a good thing.

SB-568

Submitted on: 2/10/2021 11:17:57 AM

Testimony for PSM on 2/11/2021 1:30:00 PM

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

Comments:

I SUPPORT SB568

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.

This could help alleviate Maui county's problem with deer overpopulation. A lot of the deer is on private lands and out of the reach of hunters due to landowner liability concerns.

Mahalo.

Todd Yukutake
808-255-3066
todd@hifico.org

LATE

SB-568

Submitted on: 2/10/2021 1:59:46 PM

Testimony for PSM on 2/11/2021 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Raymond DeCastro III	Individual	Support	No

Comments:

Aloha!

My name is Raymond DeCastro. I strongly support bill: sb568.

All too often people try to pin the blame of their actions on others. Now is the time to stop situations where people have an incentive to try and get rich by suing people for their own negligence.

please vote to support this bill.

thank you!

LATE

SB-568

Submitted on: 2/10/2021 2:51:27 PM

Testimony for PSM on 2/11/2021 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Steve Robertson	Individual	Support	No

Comments:

Overpopulation of deer pigs and goats is a major problem in Maui county. Hunters are willing to assist in harvest of the good sources of meat, but most of the animals occur on private land. Landowners have been reluctant to grant access due to concerns over liability, so this bill could help move the needle in a better direction. Mahalo.

LATE

SB-568

Submitted on: 2/10/2021 8:28:30 PM

Testimony for PSM on 2/11/2021 1:30:00 PM

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

Comments:

Game animal herds are suffering starvation from being under hunted and drought. Please pass this bill into law to help landowners allow hunting on private property and more effectively and humanely manage the herds.

SB-568

Submitted on: 2/11/2021 8:36:03 AM

Testimony for PSM on 2/11/2021 1:30:00 PM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Melvin Casio	Individual	Support	No

Comments:

I am in support of SB568, giving liability for actions to private users instead of landowners.

SB-568

Submitted on: 2/11/2021 9:08:37 AM

Testimony for PSM on 2/11/2021 1:30:00 PM

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

Comments:

Please pass this bill.