
A BILL FOR AN ACT

RELATING TO TRESPASS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 708-800, Hawaii Revised Statutes, is
2 amended by amending the definition of "enter or remain
3 unlawfully" to read as follows:

4 "Enter or remain unlawfully [~~."~~ ~~A person "enters or~~
5 ~~remains unlawfully]~~" means entering or remaining in or upon
6 premises when the person is not licensed, invited, or otherwise
7 privileged to do so. A person who, regardless of the person's
8 intent, enters or remains in or upon premises [~~which]~~ that are
9 at the time open to the public does so with license and
10 privilege unless the person defies a lawful order not to enter
11 or remain, personally communicated to the person by the owner of
12 the premises or some other authorized person. A license or
13 privilege to enter or remain in a building [~~which]~~ that is only
14 partly open to the public is not a license or privilege to enter
15 or remain in that part of the building [~~which]~~ that is not open
16 to the public. [~~A person who enters or remains upon unimproved~~
17 ~~and apparently unused land, which is neither fenced nor~~
18 ~~otherwise enclosed in a manner designed to exclude intruders,~~



1 ~~does so with license and privilege unless notice against~~
2 ~~trespass is personally communicated to the person by the owner~~
3 ~~of the land or some other authorized person, or unless notice is~~
4 ~~given by posting in a conspicuous manner.] "~~

5 SECTION 2. Section 708-814, Hawaii Revised Statutes, is
6 amended by amending subsection (1) to read as follows:

7 "(1) A person commits the offense of criminal trespass in
8 the second degree if:

9 (a) The person knowingly enters or remains unlawfully in
10 or upon premises that are enclosed in a manner
11 designed to exclude intruders or are fenced;

12 (b) The person enters or remains unlawfully in or upon
13 commercial premises after a reasonable warning or
14 request to leave by the owner or lessee of the
15 commercial premises, the owner's or lessee's
16 authorized agent, or a police officer; provided that
17 this paragraph shall not apply to any conduct or
18 activity subject to regulation by the National Labor
19 Relations Act.

20 For the purposes of this paragraph, "reasonable
21 warning or request" means a warning or request
22 communicated in writing at any time within a one-year



1 period inclusive of the date the incident occurred,
2 which may contain but is not limited to the following
3 information:

4 (i) A warning statement advising the person that the
5 person's presence is no longer desired on the
6 property for a period of one year from the date
7 of the notice, that a violation of the warning
8 will subject the person to arrest and prosecution
9 for trespassing pursuant to section
10 708-814(1)(b), and that criminal trespass in the
11 second degree is a petty misdemeanor;

12 (ii) The legal name, any aliases, and a photograph, if
13 practicable, or a physical description, including
14 but not limited to sex, racial extraction, age,
15 height, weight, hair color, eye color, or any
16 other distinguishing characteristics of the
17 person warned;

18 (iii) The name of the person giving the warning along
19 with the date and time the warning was given; and

20 (iv) The signature of the person giving the warning,
21 the signature of a witness or police officer who



1 was present when the warning was given and, if
2 possible, the signature of the violator; [e#]

3 (c) The person enters or remains unlawfully on
4 agricultural lands without the permission of the owner
5 of the land, the owner's agent, or the person in
6 lawful possession of the land, and the agricultural
7 lands:

8 (i) Are fenced, enclosed, or secured in a manner
9 designed to exclude intruders;

10 (ii) Have a sign or signs displayed on the unenclosed
11 cultivated or uncultivated agricultural land
12 sufficient to give notice and reading as follows:
13 "Private Property". The sign or signs,
14 containing letters not less than two inches in
15 height, shall be placed along the boundary line
16 of the land and at roads and trails entering the
17 land in a manner and position as to be clearly
18 noticeable from outside the boundary line; or

19 (iii) At the time of entry, are fallow or have a
20 visible presence or evidence of livestock-
21 raising, such as cattle, horses, water troughs,
22 shelters, or paddocks, or a crop:



- 1 (A) Under cultivation;
- 2 (B) In the process of being harvested; or
- 3 (C) That has been harvested[-]; or
- 4 (d) The person enters or remains unlawfully on unimproved
- 5 or unused lands without the permission of the owner of
- 6 the land, the owner's agent, or the person in lawful
- 7 possession of the land, and the lands:
- 8 (i) Are fenced, enclosed, or secured in a manner
- 9 designed to exclude the general public; or
- 10 (ii) Have a sign or signs displayed on the unenclosed,
- 11 unimproved, or unused land sufficient to give
- 12 reasonable notice and reads as follows: "Private
- 13 Property - No Trespassing", "Government Property
- 14 - No Trespassing", or a substantially similar
- 15 message; provided that the sign or signs shall
- 16 contain letters not less than two inches in
- 17 height and shall be placed at reasonable
- 18 intervals along the boundary line of the land and
- 19 at roads and trails entering the land in a manner
- 20 and position as to be clearly noticeable from
- 21 outside the boundary line.



1 For the purposes of this paragraph, "unimproved or
2 unused lands" means any land upon which there is no
3 improvement, construction of any structure, building, or
4 facility, or alteration of the land by grading, dredging,
5 or mining that would cause a permanent change in the land
6 or that would change the basic natural condition of the
7 land. Land remains "unimproved or unused land" under this
8 paragraph notwithstanding minor improvements, including the
9 installation or maintenance of utility poles, signage, and
10 irrigation facilities or systems; minor alterations
11 undertaken for the preservation or prudent management of
12 the unimproved or unused land, including the installation
13 or maintenance of fences, trails, or pathways; maintenance
14 activities, including forest plantings and the removal of
15 weeds, brush, rocks, boulders, or trees; and the removal or
16 securing of rocks or boulders undertaken to reduce risk to
17 downslope properties."

18 SECTION 3. Chapter 663, Hawaii Revised Statutes, is
19 amended by adding a new section to part I to be appropriately
20 designated and to read as follows:

21 "§663- Trespass; limited liability of agricultural land
22 owner. (a) An owner of agricultural land shall not be liable



1 for any injury, death, loss, or damage suffered by a trespasser
2 on the owner's agricultural land unless the injury, death, loss,
3 or damage was:

4 (1) Intentionally inflicted upon the trespasser by the
5 owner of the land; or

6 (2) Caused by the gross negligence of the owner of the
7 land.

8 (b) For purposes of this section, unless the context
9 otherwise requires:

10 "Agricultural land" means any land in excess of four acres
11 used primarily for farming operations, as defined in section
12 165-2; provided that the term shall include land used for farm
13 buildings and dwellings and roads and irrigation infrastructure
14 associated with the agricultural land.

15 "Fallow" means land associated with agricultural production
16 that is left unseeded or unplanted for one or more growing
17 seasons.

18 "Owner" means the possessor of a fee interest, a tenant,
19 lessee, occupant, or person, group, club, partnership, family,
20 organization, entity, or corporation that is in control,
21 possession, or use of the land, and their members, agents,
22 partners, representatives, shareholders, and employees.



1 "Trespasser" means a person who enters or remains
2 unlawfully on the agricultural land without the permission of
3 the owner, and the lands:

4 (1) Are fenced, enclosed, secured in a manner designed to
5 exclude the general public, or marked by a structure
6 or barrier, including a cattle grid, cattle grate, or
7 other obstacle used to secure livestock;

8 (2) Have a sign or signs displayed on the land that are
9 sufficient to give reasonable notice and that read as
10 follows: "No Trespassing" or a substantially similar
11 message; provided that the sign or signs shall consist
12 of letters not less than two inches in height and
13 shall be placed at reasonable intervals along the
14 boundary line of the land and at roads and trails
15 entering the land in a manner and position as to be
16 clearly noticeable from outside the boundary line; or

17 (3) At the time of entry, are fallow or have a visible
18 presence or evidence of livestock-raising, such as
19 cattle, horses, water troughs, shelters, or paddocks,
20 or a crop:

21 (A) Under cultivation;

22 (B) In the process of being harvested; or

1 (C) That has been harvested."

2 SECTION 4. This Act does not affect rights and duties that
3 matured, penalties that were incurred, and proceedings that were
4 begun before its effective date.

5 SECTION 5. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 6. This Act shall take effect on July 1, 2011.



Report Title:

Trespass; Unimproved or Unused Land

Description:

Makes entering or remaining unlawfully on unimproved or unused agricultural lands without permission an offense of criminal trespass in the second degree if the lands are fenced, enclosed, or secured, or a sign is displayed. Includes entering or remaining on agricultural lands that are fallow or have evidence of livestock at the time of entry in the offense of trespass in the second degree. Establishes limited liability of agricultural land owners for any injury, death, loss, or damage suffered by a trespasser. Adds definitions of "agricultural land", "fallow", "owner", "trespasser", and "unimproved or unused lands". (SD2)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

