

---

---

# A BILL FOR AN ACT

RELATING TO AGRICULTURAL THEFT.

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

1           SECTION 1. Chapter 708, Hawaii Revised Statutes, is  
2 amended by adding a new section to part IV to be appropriately  
3 designated and to read as follows:

4           "§708-       Theft; agricultural product; sentencing. (1)

5 Whenever a person is sentenced under sections 708-830.5,  
6 708-831, 708-832, or 708-833, for an offense involving theft of  
7 an agricultural product or commodity, in addition to any penalty  
8 prescribed by those sections, the person shall be required to  
9 make payment to the property owner for:

10           (a) The value of the stolen agricultural product or  
11               commodity, pursuant to section 706-646; and

12           (b) The cost of replanting the agricultural product or  
13               commodity.

14           (2) For purposes of this section, "agricultural product or  
15 commodity" includes:

16           (a) Floricultural, horticultural, viticultural,  
17               aquacultural, forestry products or commodities; and



1        (b) Shrubbery, nuts, coffee, seeds, and other farm or  
2                    plantation products or commodities,  
3        whether for personal or commercial use."

4            SECTION 2. Section 145-22, Hawaii Revised Statutes, is  
5        amended to read as follows:

6            **"§145-22 Agricultural commodities; ownership and movement**  
7        **certification.** (a) Every person, upon sale of any agricultural  
8        commodity or upon transportation of lots of any agricultural  
9        commodity of more than two hundred pounds or with a value of at  
10       least \$100 that is marketed for commercial purposes, shall  
11       complete a certificate describing the commodity, the amount and  
12       value of the commodity, and [~~indicating~~] shall include:

13            (1) The [~~seller, owner, buyer, or consignee,~~] seller's  
14                    name, residence address, telephone number, and license  
15                    plate number of any vehicle used by the seller to  
16                    deliver the commodity to the place of purchase;

17            (2) The name of the farm owner and address of origin;  
18                    [~~and~~]

19            (3) The name of the buyer or consignee, and  
20                    destination[-]; and

21            (4) The signature of the seller and, upon sale, the  
22                    signature of the buyer or consignee.



1       (b) Prior to completing the certificate, the buyer or  
2 consignee shall also require the seller to verify the seller's  
3 identity by having the seller present a valid photo  
4 identification card or license issued to the seller by a federal  
5 or state government agency. If the commodity being offered for  
6 sale has a value of \$300 or more, the seller shall also provide  
7 the buyer with a photocopy of the identification card or license  
8 of the seller.

9       (c) No prospective buyer or consignee shall purchase an  
10 agricultural commodity from a seller if the seller does not  
11 provide a copy of the ownership and movement certification and  
12 verification as required by subsections (a) and (b). Every  
13 prospective buyer or consignee shall report an attempted sale  
14 that does not meet the requirements of subsections (a) and (b)  
15 to the police.

16       (d) Two copies of the certificate shall accompany the  
17 shipment, and [a] one copy each shall be retained by [the person  
18 completing the certificate.] the seller and the buyer or  
19 consignee. One of the copies of the certificate shall be  
20 presented upon request to a state or county law enforcement  
21 officer or other officer, employee, or any other person [as  
22 described in section 145-25.] authorized and designated by the



1 board of agriculture to investigate and enforce this chapter and  
2 all rules adopted by the department pursuant thereto.

3 ~~[(b)]~~ (e) This section shall not apply to the retail sale  
4 of an agricultural commodity to the final consumer."

5 SECTION 3. Section 145-23, Hawaii Revised Statutes, is  
6 amended to read as follows:

7 **"§145-23 Lack of proof of ownership as a violation.** The  
8 failure of any person who sells, transports, or possesses after  
9 sale or transport, agricultural commodities to maintain a  
10 certificate of ownership or other written proof of ownership of  
11 the agricultural commodity, as described in section 145-22, is a  
12 violation of this part~~[-]~~ and also prima facie evidence of an  
13 offense under section 708-831(1)(e)."

14 SECTION 4. Section 145-25, Hawaii Revised Statutes, is  
15 amended to read as follows:

16 **"§145-25 Enforcement; ~~[citation and summons.]~~ criminal**  
17 **penalties.** Violations of this part or any rule adopted pursuant  
18 thereto ~~[may be enforced by citation and summons issued by:]~~  
19 shall be criminal offenses as follows:

20 (1) ~~[Any state or county law enforcement officer; or]~~ A  
21 violation in which the value of the agricultural  
22 commodity exceeds \$100 shall be a class C felony; and



1           (2) ~~[Any officer or employee of the department of~~  
2           ~~agriculture, or any other person, authorized and~~  
3           ~~designated by the board of agriculture to investigate~~  
4           ~~and enforce this chapter and all rules adopted by the~~  
5           ~~department pursuant thereto.] A violation in which the~~  
6           ~~value of the agricultural commodity is \$100 or less~~  
7           ~~shall be a misdemeanor."~~

8           SECTION 5. Section 145-27, Hawaii Revised Statutes, is  
9           amended to read as follows:

10           "~~{}~~**§145-27**~~{}~~ **Authorization to seize and hold**  
11 **commodities; disposition.** (a) ~~[In addition to the issuance of~~  
12 ~~a citation and summons, upon] Upon reasonable belief that ~~[the]~~~~  
13 ~~a person is in unlawful possession of agricultural commodities a~~  
14 ~~law enforcement officer or other officer or employee [as~~  
15 ~~described in section 145-25] shall be authorized to hold the~~  
16 ~~agricultural commodity for not longer than forty-eight hours to~~  
17 ~~investigate and ascertain the ownership of the agricultural~~  
18 ~~commodity. If the lawful owner is determined and located, the~~  
19 ~~agricultural, aquacultural, or horticultural commodity shall be~~  
20 ~~released to the lawful owner.~~

21           (b) If for any reason the agricultural commodity is not  
22           released to the lawful owner after being in the custody of the



1 law enforcement officer or other officer or employee [~~as~~  
2 ~~described in section 145-25~~] for forty-eight hours, or less in  
3 the case of highly perishable commodities, the commodity may be  
4 sold at fair market value to any retailer, wholesaler, or packer  
5 of the commodity. All of the proceeds derived from the sale  
6 shall be held by the law enforcement officer or other officer or  
7 employee [~~as described in section 145-25~~] for not longer than  
8 six months, during which time the lawful owner of the commodity  
9 may submit satisfactory proof of ownership and obtain possession  
10 of the proceeds. The owner may be held responsible for any  
11 costs and expenses that may be incurred by the law enforcement  
12 officer or other officer or employee [~~as described in section~~  
13 ~~145-25~~]. Any proceeds of sale not recovered within six months  
14 for lack of a claim or for insufficient proof shall be treated  
15 as unclaimed property of the State.

16 (c) Any commodity that remains unsold after being offered  
17 for sale pursuant to this section may be donated to a nonprofit  
18 charitable organization or destroyed at the discretion of the  
19 law enforcement officer or other officer or employee [~~as~~  
20 ~~described in section 145-25~~].

21 (d) For the purposes of this section, "officer or  
22 employee" means any officer or employee of the department of



1 agriculture or any other person authorized and designated by the  
2 board of agriculture to investigate and enforce this chapter and  
3 all rules adopted by the department pursuant thereto."

4 SECTION 6. Section 708-831, Hawaii Revised Statutes, is  
5 amended by amending subsection (1) to read as follows:

6 "(1) A person commits the offense of theft in the second  
7 degree if the person commits theft:

8 (a) Of property from the person of another;

9 (b) Of property or services the value of which exceeds  
10 \$300;

11 (c) Of an aquacultural product or part thereof from  
12 premises that [~~is~~] are fenced or enclosed in a manner  
13 designed to exclude intruders or there is prominently  
14 displayed on the premises a sign or signs sufficient  
15 to give notice and reading as follows: "Private  
16 Property" [~~or~~], "No Trespassing", or a substantially  
17 similar message;

18 (d) Of agricultural equipment, supplies, or products, or  
19 part thereof, the value of which exceeds \$100 but does  
20 not exceed \$20,000, or of agricultural products that  
21 exceed twenty-five pounds, from premises that are  
22 fenced, enclosed, or secured in a manner designed to



1           exclude intruders or there is prominently displayed on  
 2           the premises a sign or signs sufficient to give notice  
 3           and reading as follows: "Private Property" [-], "No  
 4           Trespassing", or a substantially similar message; or  
 5           if at the point of entry of the premise, a crop is  
 6           visible. The sign or signs, containing letters not  
 7           less than two inches in height, shall be placed along  
 8           the boundary line of the land in a manner and in such  
 9           position as to be clearly noticeable from outside the  
 10          boundary line. Possession of agricultural products  
 11          without ownership and movement certificates, when a  
 12          certificate is required pursuant to chapter 145, is  
 13          prima facie evidence that the products are or have  
 14          been stolen[-]; or

15          (e) Of agricultural commodities that are generally known  
 16          to be marketed for commercial purposes. Possession of  
 17          agricultural commodities without ownership and  
 18          movement certificates, when a certificate is required  
 19          pursuant to section 145-22, is prima facie evidence  
 20          that the products are or have been stolen; provided  
 21          that "agriculture commodities" has the same meaning as  
 22          in section 145-21."





1 SECTION 7. Section 145-26, Hawaii Revised Statutes, is  
2 repealed.

3 ~~["**§145-26** Form of citation and summons. (a) In issuing~~  
4 ~~citations and summons for violations of this part, state and~~  
5 ~~county law enforcement officers shall use the summons and~~  
6 ~~complaint citation books issued by the judiciary for violations~~  
7 ~~of the traffic code.~~

8 ~~(b) Citations issued by officers and employees as~~  
9 ~~described in section 145-25(2) shall use citation and summons~~  
10 ~~forms that shall warn the person to appear and answer the charge~~  
11 ~~against the person at a place and at a time within thirty days~~  
12 ~~after the citation.~~

13 ~~The citation and summons shall be in a form that allows a~~  
14 ~~carbon copy to be provided to the accused. The district courts~~  
15 ~~may provide for the disposition of the original and any other~~  
16 ~~copies. Every citation and summons shall be consecutively~~  
17 ~~numbered and each carbon copy shall bear the number of its~~  
18 ~~respective original." ]~~

19 SECTION 8. Section 145-28, Hawaii Revised Statutes, is  
20 repealed.

21 ~~["**§145-28** Administration of oath. When a complaint is~~  
22 ~~made by officers and employees as described in section 145-25(2)~~

1 ~~to any prosecuting officer of the violation of this part or of~~  
2 ~~any rules adopted pursuant thereto, the officer or employee who~~  
3 ~~issued the citation and summons shall subscribe to it under oath~~  
4 ~~administered by another official of the department whose name~~  
5 ~~has been submitted to the prosecuting officer and who has been~~  
6 ~~designated by the chairperson of the board of agriculture to~~  
7 ~~administer the oaths." ]~~

8 SECTION 9. This Act does not affect rights and duties that  
9 matured, penalties that were incurred, and proceedings that were  
10 begun before its effective date.

11 SECTION 10. Statutory material to be repealed is bracketed  
12 and stricken. New statutory material is underscored.

13 SECTION 11. This Act shall take effect upon its approval.

**Report Title:**

Agricultural Commodities; Criminal Penalties

**Description:**

Requires those sentenced for agricultural theft to provide restitution to the victim. Requires proof of identification from sellers of agricultural commodities. Establishes criminal penalties for failure to maintain a certificate of ownership or other written proof of ownership of agricultural commodities. Makes theft of agricultural commodities an offense of theft in the second degree and establishes lack of ownership or movement certificates as prima facie evidence of the theft. (SD2)

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

