

JAN 27 2016

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# A BILL FOR AN ACT

RELATING TO CRIMINAL TRESPASS.

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

1           SECTION 1. The legislature finds that it is necessary to  
2 add a new criminal trespass section to protect against people  
3 remaining on improved state land when it is closed or otherwise  
4 restricted, and on or under state highways. In addition, the  
5 offense of criminal trespass in the second degree should be  
6 amended to include government agricultural lands that are not  
7 fenced, enclosed, or secured in a manner designed to exclude  
8 intruders.

9           SECTION 2. Chapter 708, Hawaii Revised Statutes, is  
10 amended by adding to part II a new section to be appropriately  
11 designated and to read as follows:

12           "§708-      Criminal trespass onto state lands.   (1)   A  
13 person commits the offense of criminal trespass onto state lands  
14 if:

15           (a) The person enters or remains unlawfully in or upon any  
16           improved state land when:

17           (i) It is closed and those closure hours are posted  
18           on a sign or signs on the improved state land; or

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1           (ii) Such land is not open to the public and there are  
2                   signs sufficient to give reasonable notice that  
3                   reads: "Government Property - No Trespassing" or  
4                   its functional equivalent, provided that such  
5                   signs shall contain letters not less than two  
6                   inches in height and shall be placed at  
7                   reasonable intervals along the boundary line of  
8                   the land and at roads and trails entering the  
9                   land in a manner and position as to be clearly  
10                  noticeable from outside the boundary line; or

11       (b) The person enters or remains unlawfully in or upon any  
12                  state land on or under any highway, and the state land  
13                  has a sign or signs displayed upon the land sufficient  
14                  to give reasonable notice and reads: "Government  
15                  Property - No Trespassing" or its functional  
16                  equivalent, provided that the signs shall contain  
17                  letters not less than two inches in height and shall  
18                  be placed at reasonable intervals along the boundary  
19                  line of the land and at roads and trails entering the  
20                  land in a manner and position as to be clearly  
21                  noticeable from outside the boundary line.

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1        (2) For the purposes of this section, unless the context  
2 requires otherwise:

3        "Highway" has the same meaning as in section 286-2.

4        "Improved state land" means any state land upon which there  
5 is improvement, including construction of any structure,  
6 building, or facility; or alteration of the land by grading,  
7 dredging, or mining that would cause a permanent change in the  
8 land or that would change the basic natural condition of the  
9 land, including but not limited to harbors under the care and  
10 control of the department of transportation under chapter 266,  
11 and harbors under the care and control of the department of land  
12 and natural resources under chapter 200. Land is not improved  
13 if it only has minor improvements, including the installation or  
14 maintenance of utility poles, signage, and irrigation facilities  
15 or systems; minor alterations undertaken for the preservation or  
16 prudent management of the unimproved or unused land, including  
17 the installation or maintenance of fences, trails, or pathways;  
18 maintenance activities, including forest plantings and the  
19 removal of weeds, brush, rocks, boulders, or trees; and the  
20 removal or securing of rocks or boulders undertaken to reduce  
21 risk to downslope properties.

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1        "State lands" means all land owned by the State, through  
2 any of its departments or agencies.

3        (3) Criminal trespass onto state lands is a petty  
4 misdemeanor."

5        SECTION 3. 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

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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

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

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" [-] or "Government Property-No  
14          Trespassing." The sign or signs, containing

15          letters not less than two inches in height, shall  
16          be placed along the boundary line of the land and  
17          at roads and trails entering the land in a manner  
18          and position as to be clearly noticeable from  
19          outside the boundary line; or

20          (iii) At the time of entry, are fallow or have a  
21          visible presence of livestock or a crop:

22                (A) Under cultivation;

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

21 For the purposes of this paragraph,

22 "unimproved or unused lands" means any land upon

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

- 20          (e) The person enters or remains unlawfully in or upon the  
21          premises of any public housing project or state low-  
22          income housing project, as defined in section 356D-1,



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1 356D-51, or 356D-91, after a reasonable warning or  
2 request to leave by housing authorities or a police  
3 officer, based upon an alleged violation of law or  
4 administrative rule; provided that a warning or  
5 request to leave shall not be necessary between 10:00  
6 p.m. and 5:00 a.m. at any public housing project or  
7 state low-income housing project that is closed to the  
8 public during those hours and has signs, containing  
9 letters not less than two inches in height, placed  
10 along the boundary of the project property, at all  
11 entrances to the property, in a manner and position to  
12 be clearly noticeable from outside the boundary of the  
13 project property and to give sufficient notice that  
14 the public housing project or state low-income housing  
15 project is closed to the public during those hours."

16 SECTION 4. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

18 SECTION 5. This Act shall take effect upon its approval.

19  
20 INTRODUCED BY:                     *M. N. W.*                    

21 BY REQUEST

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**Report Title:**

Criminal Trespass

**Description:**

Adds the offense of criminal trespass onto state lands to part II of chapter 708, Hawaii Revised Statutes, and amends criminal trespass in the second degree to include and apply to agricultural property owned by the government that is not fenced, enclosed or otherwise secured in a manner designed to exclude intruders.

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

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO CRIMINAL TRESPASS

PURPOSE: The purposes of this bill are to create the new offense of criminal trespass onto state lands, to be added to amend chapter 708, Hawaii Revised Statutes, and to amend the offense of criminal trespass in the second degree to include government agricultural lands that are not fenced, enclosed, or secured in a manner designed to exclude intruders.

MEANS: Add a new section to part II of chapter 708, and amend section 708-814(1), Hawaii Revised Statutes.

JUSTIFICATION: Current criminal trespass laws apply to dwellings, hotels, apartment buildings, public and private schools, fenced or enclosed properties, commercial properties, certain agricultural lands, unimproved or unused lands, public housing projects and low-income housing projects, and public parks and recreational grounds. It is not clear, however, that current criminal trespass laws would apply to improved state lands, state land on or under any highway, or unfenced, unenclosed, or unsecured agricultural lands owned by the government. This effectively leaves a gap in the criminal trespass law that leaves certain state lands without protection from criminal trespass.

Impact on the public: The public would benefit because this new law would preserve and protect state land.

Impact on the department and other agencies:  
The Department would benefit because it would clarify that the criminal trespass laws applies to all state lands.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: ATG 100.

OTHER AFFECTED  
AGENCIES: None.

EFFECTIVE DATE: Upon approval.