
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.

5 The legislature further finds that the offense of criminal
6 trespass in the second degree should be amended to include
7 government agricultural lands that are not fenced, enclosed, or
8 secured in a manner designed to exclude intruders, when there is
9 appropriate signage giving notice that the property is
10 government property and that trespassing is prohibited.

11 This Act cannot and is not intended to abridge the
12 constitutional rights of persons who are homeless. These
13 include their rights under the Eighth Amendment of the United
14 States Constitution and their corresponding rights under Article
15 I, Section 12 of the Constitution of the State of Hawaii to be
16 free from cruel and unusual punishment.



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

4 "§708- Criminal trespass onto state lands. (1) A
5 person commits the offense of criminal trespass onto state lands
6 if:

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

9 (i) The land is closed to public use and its closure
10 hours are posted on a sign or signs on the
11 improved state land; or

12 (ii) The land is not open to the public and there are
13 signs sufficient to give reasonable notice that
14 read: "Government Property - No Trespassing";
15 provided that such signs shall contain letters
16 not less than two inches in height and shall be
17 placed at reasonable intervals along the boundary
18 line of the land and at roads and trails entering
19 the land in a manner and position as to be
20 clearly noticeable from outside the boundary
21 line; or



1 (b) The person enters or remains unlawfully in or upon any
 2 state land on or under any highway, and the state land
 3 has a sign or signs displayed upon the land sufficient
 4 to give reasonable notice that read: "Government
 5 Property - No Trespassing"; provided that the signs
 6 shall contain letters not less than two inches in
 7 height and shall be placed at reasonable intervals
 8 along the boundary line of the land and at roads and
 9 trails entering the land in a manner and position as
 10 to be clearly noticeable from outside the boundary
 11 line.

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

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

15 "Improved state land" means any state land upon which there
 16 is improvement, including any structure, building, or facility;
 17 or alteration of the land by grading, dredging, or mining that
 18 would cause a permanent change in the land or that would change
 19 the basic natural condition of the land, including but not
 20 limited to harbors under the care and control of the department
 21 of transportation under chapter 266, and small boat harbors



1 under the care and control of the department of land and natural
 2 resources under chapter 200. Land is not "improved state land"
 3 if it only has minor improvements, including utility poles,
 4 signage, and irrigation facilities or systems; or minor
 5 alterations undertaken for the preservation or prudent
 6 management of the unimproved or unused land, including fences,
 7 trails, or pathways. Land is not "improved state land" solely
 8 due to state maintenance activities, including forest plantings
 9 and the removal of weeds, brush, rocks, boulders, or trees; or
 10 removal or securing of rocks or boulders undertaken to reduce
 11 risk to downslope properties.

12 "State lands" means all land owned by the State through any
 13 of its departments or agencies.

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

16 SECTION 3. Section 708-814, Hawaii Revised Statutes, is
 17 amended by amending subsection (1) to read as follows:

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



- 1 (a) The person knowingly enters or remains unlawfully in
- 2 or upon premises that are enclosed in a manner
- 3 designed to exclude intruders or are fenced;
- 4 (b) The person enters or remains unlawfully in or upon
- 5 commercial premises after a reasonable warning or
- 6 request to leave by the owner or lessee of the
- 7 commercial premises, the owner's or lessee's
- 8 authorized agent, or a police officer; provided that
- 9 this paragraph shall not apply to any conduct or
- 10 activity subject to regulation by the National Labor
- 11 Relations Act.

12 For the purposes of this paragraph, "reasonable
13 warning or request" means a warning or request
14 communicated in writing at any time within a one-year
15 period inclusive of the date the incident occurred,
16 which may contain but is not limited to the following
17 information:

- 18 (i) A warning statement advising the person that the
- 19 person's presence is no longer desired on the
- 20 property for a period of one year from the date
- 21 of the notice, that a violation of the warning



1 will subject the person to arrest and prosecution
2 for trespassing pursuant to section 708-
3 814(1)(b), and that criminal trespass in the
4 second degree is a petty misdemeanor;

5 (ii) The legal name, any aliases, and a photograph, if
6 practicable, or a physical description, including
7 but not limited to sex, racial extraction, age,
8 height, weight, hair color, eye color, or any
9 other distinguishing characteristics of the
10 person warned;

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

13 (iv) The signature of the person giving the warning,
14 the signature of a witness or police officer who
15 was present when the warning was given and, if
16 possible, the signature of the violator;

17 (c) The person enters or remains unlawfully on
18 agricultural lands without the permission of the owner
19 of the land, the owner's agent, or the person in
20 lawful possession of the land, and the agricultural
21 lands:



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



- 1 (i) Are fenced, enclosed, or secured in a manner
- 2 designed to exclude the general public; or
- 3 (ii) Have a sign or signs displayed on the unenclosed,
- 4 unimproved, or unused land sufficient to give
- 5 reasonable notice and reads as follows: "Private
- 6 Property - No Trespassing", "Government Property
- 7 - No Trespassing", or a substantially similar
- 8 message; provided that the sign or signs shall
- 9 contain letters not less than two inches in
- 10 height and shall be placed at reasonable
- 11 intervals along the boundary line of the land and
- 12 at roads and trails entering the land in a manner
- 13 and position as to be clearly noticeable from
- 14 outside the boundary line.

15 For the purposes of this paragraph,

16 "unimproved or unused lands" means any land upon which

17 there is no improvement; construction of any

18 structure, building, or facility; or alteration of the

19 land by grading, dredging, or mining that would cause

20 a permanent change in the land or that would change

21 the basic natural condition of the land. Land remains



1 "unimproved or unused land" under this paragraph
 2 notwithstanding minor improvements, including the
 3 installation or maintenance of utility poles, signage,
 4 and irrigation facilities or systems; minor
 5 alterations undertaken for the preservation or prudent
 6 management of the unimproved or unused land, including
 7 the installation or maintenance of fences, trails, or
 8 pathways; maintenance activities, including forest
 9 plantings and the removal of weeds, brush, rocks,
 10 boulders, or trees; and the removal or securing of
 11 rocks or boulders undertaken to reduce risk to
 12 downslope properties; or

13 (e) The person enters or remains unlawfully in or upon the
 14 premises of any public housing project [~~or state low-~~
 15 ~~income housing project,~~] as defined in section
 16 356D-1 [~~7-356D-51,~~] or 356D-91, or state low-income
 17 housing project, as defined in section 356D-51, after
 18 a reasonable warning or request to leave by housing
 19 authorities or a police officer, based upon an alleged
 20 violation of law or administrative rule; provided that
 21 a warning or request to leave shall not be necessary



1 between 10:00 p.m. and 5:00 a.m. at any public housing
2 project or state low-income housing project that is
3 closed to the public during those hours and has signs,
4 containing letters not less than two inches in height,
5 placed along the boundary of the project property, at
6 all entrances to the property, in a manner and
7 position to be clearly noticeable from outside the
8 boundary of the project property and to give
9 sufficient notice that the public housing project or
10 state low-income housing project is closed to the
11 public during those hours."

12 SECTION 4. The department of the attorney general shall
13 submit a written report to the legislature regarding the extent
14 to which this Act has been utilized, including any proposed
15 legislation, no later than twenty days prior to the convening of
16 the regular session of 2018.

17 SECTION 5. This Act does not affect rights and duties that
18 matured, penalties that were incurred, and proceedings that were
19 begun before its effective date.



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

3 SECTION 7. This Act shall take effect on July 1, 2016.



Report Title:

Criminal Trespass; State Lands; State Highways

Description:

Adds the offense of criminal trespass onto state lands to the penal code. Amends criminal trespass in the second degree to apply to government agricultural property regardless of whether it is fenced, enclosed, or otherwise secured. (SB2816 HD2)

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

