
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 establish a new criminal trespass offense to protect against
3 people remaining on improved state land when it is closed or
4 otherwise restricted, or 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 trespassing is prohibited.

11 This Act is not intended to abridge the constitutional
12 rights of persons who are homeless. These include their rights
13 under the Eighth Amendment of the United States Constitution and
14 their corresponding rights under article I, section 12, of the
15 Constitution of the State of Hawaii to be free from cruel and
16 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) Except
5 for lands owned by the office of Hawaiian affairs, and except
6 for improved state lands that are designated safe havens by
7 state departments or agencies, or that are under executive order
8 by the governor to be used as a safe haven and have a department
9 of health component and adequate space, not to include state
10 hospitals, a person commits the offense of criminal trespass
11 onto state lands if:

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

14 (i) The land is closed to public use and its closure
15 hours are posted on a sign or signs on the
16 improved state land, and after a request to leave
17 is made by any law enforcement officer the person
18 remains in or upon the land; or

19 (ii) The land is not open to the public and there are
20 signs that are sufficient to give reasonable
21 notice that read: "Government Property - No



1 Trespassing"; provided that these signs shall
2 contain letters not less than two inches in
3 height and shall be placed at intervals not less
4 than three signs to a mile along the boundary
5 line of the land and at all roads and trails
6 entering the land in a manner and position as to
7 be clearly noticeable from outside the boundary;
8 or

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

20 (2) Criminal trespass onto state lands is a petty
21 misdemeanor.



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



1 rocks or boulders undertaken to reduce risk to downslope
2 properties.

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

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



1 communicated in writing at any time within a one-year
2 period inclusive of the date the incident occurred,
3 which may contain but is not limited to the following
4 information:

5 (i) A warning statement advising the person that the
6 person's presence is no longer desired on the
7 property for a period of one year from the date
8 of the notice, that a violation of the warning
9 will subject the person to arrest and prosecution
10 for trespassing pursuant to [~~section 708-~~
11 ~~§14(1)(b),~~] this subsection, and that criminal
12 trespass in the second degree is a petty
13 misdemeanor;

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

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



- 1 (iv) The signature of the person giving the warning,
2 the signature of a witness or police officer who
3 was present when the warning was given and, if
4 possible, the signature of the violator;
- 5 (c) The person enters or remains unlawfully on
6 agricultural lands without the permission of the owner
7 of the land, the owner's agent, or the person in
8 lawful possession of the land, and the agricultural
9 lands:
- 10 (i) Are fenced, enclosed, or secured in a manner
11 designed to exclude intruders;
- 12 (ii) Have a sign or signs displayed on the unenclosed
13 cultivated or uncultivated agricultural land
14 sufficient to give notice and reading as follows:
15 "Private Property" [-] or "Government Property -
16 No Trespassing". The sign or signs, containing
17 letters not less than two inches in height, shall
18 be placed at intervals not less than three signs
19 to a mile along the boundary line of the land and
20 at roads and trails entering the land in a manner



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



1 intervals not less than three signs to a mile
2 along the boundary line of the land and at roads
3 and trails entering the land in a manner and
4 position as to be clearly noticeable from outside
5 the boundary line.

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



1 boulders, or trees; and the removal or securing of
2 rocks or boulders undertaken to reduce risk to
3 downslope properties; or
4 (e) The person enters or remains unlawfully in or upon the
5 premises of any public housing project or state low-
6 income housing project, as defined in section 356D-1,
7 356D-51, or 356D-91, after a reasonable warning or
8 request to leave by housing authorities or a police
9 officer, based upon an alleged violation of law or
10 administrative rule; provided that a warning or
11 request to leave shall not be necessary between 10:00
12 p.m. and 5:00 a.m. at any public housing project or
13 state low-income housing project that is closed to the
14 public during those hours and has signs, containing
15 letters not less than two inches in height, placed at
16 intervals not less than three signs to a mile along
17 the boundary of the project property[7] and at all
18 entrances to the property, in a manner and position to
19 be clearly noticeable from outside the boundary of the
20 project property and to give sufficient notice that



1 the public housing project or state low-income housing
2 project is closed to the public during those hours."

3 SECTION 4. The department of the attorney general shall
4 submit a written report to the legislature regarding the extent
5 to which this Act has been utilized, including any proposed
6 legislation, no later than twenty days prior to the convening of
7 the regular sessions of 2018, 2019, and 2020.

8 SECTION 5. 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 6. This Act does not affect native Hawaiian
12 traditional and customary rights as set forth in the state
13 constitution.

14 SECTION 7. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 8. This Act shall take effect on July 1, 2050.



Report Title:

Criminal Trespass; State Lands; State Highways

Description:

Establishes the offense of criminal trespass onto improved state lands to the penal code. Amends the offenses of criminal trespass in the second degree to apply to government agricultural property regardless of whether it is fenced, enclosed, or otherwise secured. (SB895 HD2)

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

