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# A BILL FOR AN ACT

RELATING TO LANDOWNER LIABILITY.

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

1           SECTION 1. Chapter 663, Hawaii Revised Statutes is amended  
2 by adding a new section to be appropriately designated and to  
3 read as follows:

4           "§663-    Trespass; no duty of care; liability of owner.

5           (a) An owner of range land owes no duty of care to a trespasser  
6 for injury to, property damage, or death of the trespasser that  
7 occurs on range land or to warn the trespasser of dangerous  
8 natural conditions or range activities or uses; provided that  
9 the range land:

10           (1) Is fenced, enclosed, or secured in a manner designed  
11 to exclude trespassers; and

12           (2) Has at least one sign displayed on the range land that  
13 is sufficient to give notice and that reads: "Private  
14 Property No Trespassing". The sign shall contain  
15 letters not less than two inches in height, and shall  
16 be placed along the boundary line of the agricultural  
17 or range land in a manner and position that is clearly  
18 noticeable from outside the boundary line. Where an



1 owner knows or reasonably should know of the presence  
2 of trespassers in an area or areas of range land, a  
3 sign or signs sufficient to give notice shall be  
4 placed at such area or areas.

5 (b) Nothing in this section shall limit the liability of a  
6 range land owner whose acts are grossly negligent, in wilful or  
7 wanton disregard of the safety of a trespasser, or who  
8 intentionally causes injury, property damage, or death to a  
9 trespasser. This section shall not apply to minor children  
10 twelve years of age or younger where the owner knows of or  
11 reasonably should anticipate the presence of such children on  
12 range land.

13 (c) The duty of care of an owner of range land who allows  
14 recreational use of range land shall be as provided in section  
15 520-3.

16 (d) As used in this section:

17 "Range land" means any land exceeding five acres that is  
18 used primarily for range use, including livestock grazing,  
19 dairying, or keeping of equine, bovine, and similar livestock,  
20 such as cattle, horses, sheep, and goats. Range land includes  
21 appurtenant roadways, waterways, buildings, structures, and  
22 machinery or equipment attached to the land that is used in



1 connection with range land activities. Range land in rural  
2 areas may include multiple parcels of less than five acres in  
3 size that together exceed five acres in the aggregate, when  
4 operated as a single venture.

5 "Trespasser" has the same meaning as section 708-815."

6 SECTION 2. Section 708-814, Hawaii Revised Statutes, is  
7 amended to read as follows:

8 **"§708-814 Criminal trespass in the second degree. (1) A**  
9 person commits the offense of criminal trespass in the second  
10 degree if:

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

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



1           For the purposes of this paragraph, "reasonable  
2 warning or request" means a warning or request  
3 communicated in writing at any time within a one-year  
4 period inclusive of the date the incident occurred,  
5 which may contain but is not limited to the following  
6 information:

7           (i) A warning statement advising the person that the  
8 person's presence is no longer desired on the  
9 property for a period of one year from the date  
10 of the notice, that a violation of the warning  
11 will subject the person to arrest and prosecution  
12 for trespassing pursuant to section  
13 708-814(1)(b), and that criminal trespass in the  
14 second degree is a petty misdemeanor;

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

21           (iii) The name of the person giving the warning along  
22 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; or
- 5       (c) The person enters or remains on agricultural lands  
6           without the permission of the owner of the land, the  
7           owner's agent, or the person in lawful possession of  
8           the land, and the agricultural lands:
  - 9           (i) Are fenced, enclosed, or secured in a manner  
10                   designed to exclude intruders;
  - 11           (ii) Have a sign or signs displayed on the unenclosed  
12                   cultivated or uncultivated agricultural land  
13                   sufficient to give notice and reading as follows:  
14                   "Private Property". The sign or signs,  
15                   containing letters not less than two inches in  
16                   height, shall be placed along the boundary line  
17                   of the land and at roads and trails entering the  
18                   land in a manner and position as to be clearly  
19                   noticeable from outside the boundary line; or
  - 20           (iii) At the time of entry, are fallow or have a  
21                   visible presence or evidence of livestock-



1                   raising, such as cattle, horses, water troughs,  
2                   shelters, paddocks, or of a crop:

3                   (A) Under cultivation;

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

5                   (C) That has been harvested.

6                   (2) Criminal trespass in the second degree is a petty  
7 misdemeanor~~[-]~~; provided that a fine of up to \$10,000 may be  
8 imposed for an offense under subsection (1)(c)."

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

12                   SECTION 4. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

14                   SECTION 5. This Act shall take effect on January 1, 2012  
15 and shall sunset on December 31, 2017.



**Report Title:**

Landowner Liability; Trespass

**Description:**

Establishes that an owner of range land owes no duty of care, under certain conditions, toward a trespasser for injury suffered by the trespasser that occurs on range land or to warn the trespasser of dangerous natural conditions or range activities or uses. Clarifies the offense of criminal trespass in the second degree as it relates to land that is fallow or has evidence of livestock-raising, and authorizes a \$10,000 fine for this offense. Effective January 1, 2012 and sunsets December 31, 2017. (SB1079 SD2 HD2 Proposed)

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

