



GOV. MSG. NO. 1312

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

July 8, 2011

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

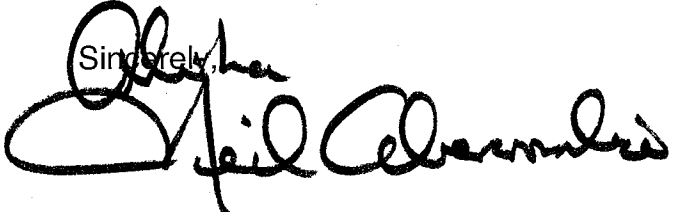
The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on July 8, 2011, the following bill was signed into law:

HB227 HD2 SD2 CD1

RELATING TO TRESPASS
Act 208 (11)

Sincerely,


NEIL ABERCROMBIE
Governor, State of Hawaii

A BILL FOR AN ACT

RELATING TO TRESPASS.

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

1 SECTION 1. Section 708-800, Hawaii Revised Statutes, is
2 amended by amending the definition of "enter or remain
3 unlawfully" to read as follows:
4 "Enter or remain unlawfully[~~-. A person enters or~~
5 ~~remains unlawfully]~~" means to enter or remain in or upon
6 premises when the person is not licensed, invited, or otherwise
7 privileged to do so. A person who, regardless of the person's
8 intent, enters or remains in or upon premises which are at the
9 time open to the public does so with license and privilege
10 unless the person defies a lawful order not to enter or remain,
11 personally communicated to the person by the owner of the
12 premises or some other authorized person. A license or
13 privilege to enter or remain in a building which is only partly
14 open to the public is not a license or privilege to enter or
15 remain in that part of the building which is not open to the
16 public. [~~A person who enters or remains upon unimproved and~~
17 ~~apparently unused land, which is neither fenced nor otherwise~~
18 ~~enclosed in a manner designed to exclude intruders, does so with~~



1 ~~license and privilege unless notice against trespass is~~
2 ~~personally communicated to the person by the owner of the land~~
3 ~~or some other authorized person, or unless notice is given by~~
4 ~~posting in a conspicuous manner.]"~~

5 SECTION 2. 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



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



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

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

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

21 (A) Under cultivation;

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



1 (C) That has been harvested[-];

2 or

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, "unimproved or
22 unused lands" means any land upon which there is no



1 improvement; construction of any structure, building, or
2 facility; or alteration of the land by grading, dredging,
3 or mining that would cause a permanent change in the land
4 or that would change the basic natural condition of the
5 land. Land remains "unimproved or unused land" under this
6 paragraph notwithstanding minor improvements, including the
7 installation or maintenance of utility poles, signage, and
8 irrigation facilities or systems; minor alterations
9 undertaken for the preservation or prudent management of
10 the unimproved or unused land, including the installation
11 or maintenance of fences, trails, or pathways; maintenance
12 activities, including forest plantings and the removal of
13 weeds, brush, rocks, boulders, or trees; and the removal or
14 securing of rocks or boulders undertaken to reduce risk to
15 downslope properties."

16 SECTION 3. Chapter 663, Hawaii Revised Statutes, is
17 amended by adding a new section to part I to be appropriately
18 designated and to read as follows:

19 "§663- **Trespass; limited liability of agricultural land**
20 **owner.** (a) An owner of agricultural land shall not be liable
21 for any injury, death, loss, or damage suffered by a trespasser



1 on the owner's agricultural land, unless the injury, death,
2 loss, or damage was:

3 (1) Intentionally inflicted upon the trespasser by the
4 owner of the land; or

5 (2) Caused by the gross negligence of the owner of the
6 land.

7 (b) For purposes of this section, unless the context
8 otherwise requires:

9 "Agricultural land" means any land in excess of four acres
10 used primarily for a farming operation, as defined in section
11 165-2; provided that the term shall include land used for farm
12 buildings and dwellings and roads and irrigation infrastructure
13 associated with the agricultural land.

14 "Fallow" means land associated with agricultural production
15 that is left unseeded or unplanted for one or more growing
16 seasons.

17 "Owner" means the possessor of a fee interest, a tenant,
18 lessee, occupant, or person, group, club, partnership, family,
19 organization, entity, or corporation that is in control,
20 possession, or use of the land, and their members, agents,
21 partners, representatives, shareholders, and employees.



1 "Trespasser" means a person who enters or remains
2 unlawfully on the agricultural land without the permission of
3 the owner, and the lands:

4 (1) Are fenced, enclosed, secured in a manner designed to
5 exclude the general public, or marked by a structure
6 or barrier, including a cattle grid, cattle grate, or
7 other obstacle used to secure livestock;

8 (2) Have a sign or signs displayed on the land that are
9 sufficient to give reasonable notice and that read as
10 follows: "No Trespassing" or a substantially similar
11 message; provided that the sign or signs shall consist
12 of letters not less than two inches in height and
13 shall be placed at reasonable intervals along the
14 boundary line of the land and at roads and trails
15 entering the land in a manner and position as to be
16 clearly noticeable from outside the boundary line; or

17 (3) At the time of entry, are fallow or have a visible
18 presence or evidence of livestock-raising, such as
19 cattle, horses, water troughs, shelters, or paddocks,
20 or a crop:

21 (A) Under cultivation;

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



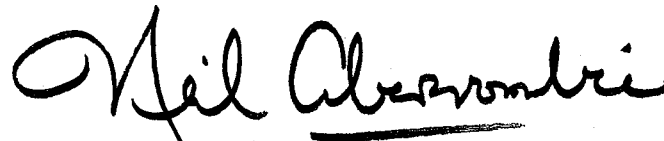
1 (C) That has been harvested."

2 SECTION 4. This Act does not affect rights and duties that
3 matured, penalties that were incurred, and proceedings that were
4 begun before its effective date.

5 SECTION 5. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 6. This Act shall take effect on July 1, 2011.

APPROVED this 8 day of JUL , 2011



GOVERNOR OF THE STATE OF HAWAII

