

IAN 21 2011

S.B. NO. 1079

A BILL FOR AN ACT

RELATING TO LANDOWNER LIABILITY.

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

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

4 "§ -A Enforcement fund; established. (a) There is
5 established in the state treasury the criminal trespass on
6 agricultural lands enforcement fund.

7 (b) The fund shall consist of moneys received from fines
8 collected pursuant to subsection 708-814(2); provided that
9 moneys in the fund shall be reserved for the use by the county
10 in which the criminal trespass on agricultural lands offense
11 occurred."

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

15 "§663- Trespass; no duty of care; liability of owner;
16 rebuttable presumption. (a) Notwithstanding any provision in
17 this chapter to the contrary, an owner of agricultural land or
18 range land owes no duty of care to keep the land safe for entry



1 or use by a trespasser or to give any warning of a dangerous
2 condition, use, structure, or activity on the land to a
3 trespasser.

4 (b) There shall be a presumption that an owner of
5 agricultural land or range land is not liable to a trespasser
6 for injury, loss, damage, or death occurring on the premise.

7 (c) In any action for civil damages, the presumption that
8 an owner of agricultural land or range land is not liable to a
9 trespasser for injury, loss, damage, or death occurring on the
10 land may be rebutted by a preponderance of the evidence that the
11 owner:

12 (1) Committed an act or omission that constitutes gross
13 negligence or wilful or wanton disregard for the
14 safety of the trespasser and that act or omission
15 caused the injury, loss, damage, or death; or

16 (2) Intentionally injured the trespasser.

17 (d) As used in this section, unless the context otherwise
18 requires:

19 "Agricultural land" means land used for agricultural
20 purposes, including general farming, cane growing, fruit
21 growing, flower growing, grazing, dairying, the production of
22 any form of livestock or poultry, and any other form of



1 agricultural activity. It includes land required for an
2 adequate farm dwelling and other essential farm buildings,
3 roads, and adjacent lands under the control of an owner.

4 "Invited guest" means any person specifically invited by
5 the owner or authorized representative of the owner to visit
6 land for social, business, or other purpose.

7 "Land" means land, roads, water, watercourses, private ways
8 and buildings, structures, and machinery or equipment when
9 attached to realty, other than lands owned by the government.

10 "Owner" means the possessor of a fee interest, a tenant,
11 lessee, occupant, or person, group, club, partnership, or
12 corporation in control of the land.

13 "Range land" means privately owned land used for livestock
14 that is not fenced or divided into paddocks or lots and that is
15 generally unimproved.

16 "Trespasser" means a person who enters or remains on land
17 without the permission of the owner or the owner's agent and who
18 is not an invited guest."

19 SECTION 3. Section 708-814, Hawaii Revised Statutes, is
20 amended to read as follows:



1 "§708-814 Criminal trespass in the second degree. (1) A
2 person commits the offense of criminal trespass in the second
3 degree if:

4 (a) The person knowingly enters or remains unlawfully in
5 or upon premises that are enclosed in a manner
6 designed to exclude intruders or are fenced;

7 (b) The person enters or remains unlawfully in or upon
8 commercial premises after a reasonable warning or
9 request to leave by the owner or lessee of the
10 commercial premises, the owner's or lessee's
11 authorized agent, or a police officer; provided that
12 this paragraph shall not apply to any conduct or
13 activity subject to regulation by the National Labor
14 Relations Act.

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

21 (i) A warning statement advising the person that the
22 person's presence is no longer desired on the



1 property for a period of one year from the date
2 of the notice, that a violation of the warning
3 will subject the person to arrest and prosecution
4 for trespassing pursuant to section
5 708-814(1)(b), and that criminal trespass in the
6 second degree is a petty misdemeanor;

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

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

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

19 (c) The person enters or remains on agricultural lands
20 without the permission of the owner of the land, the
21 owner's agent, or the person in lawful possession of
22 the land, and the agricultural 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". The sign or signs,~~
7 ~~containing letters not less than two inches in~~
8 ~~height, shall be placed along the boundary line~~
9 ~~of the land and at roads and trails entering the~~
10 ~~land in a manner and position as to be clearly~~
11 ~~noticeable from outside the boundary line; or~~

12 ~~(iii)]~~ [A] at the time of entry, have a visible
13 presence of a crop:

- 14 [A] (i) Under cultivation;
15 [B] (ii) In the process of being harvested; or
16 [C] (iii) That has been harvested.

17 (2) Criminal trespass in the second degree is a petty
18 misdemeanor~~[r]~~; provided that a fine of up to \$10,000 may be
19 imposed for a offense under subsection (1)(c); provided further
20 that these fines shall be deposited into the criminal trespass
21 on agricultural lands enforcement fund under section 199- ."



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

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

6 SECTION 6. This Act shall take effect upon its approval.

7

INTRODUCED BY: *Cynthia Hill*



Report Title:

Landowner Liability; Trespass

Description:

Establishes a criminal trespass on agricultural lands enforcement fund; provides that owners of agricultural land or range land have no duty of care to trespassers; establishes rebuttable presumption of no liability; permits trespasser to overcome presumption by preponderance of evidence that owner was grossly negligent or intentionally injured the trespasser; authorized fines of up to \$10,000 for the offense of criminal trespass on agricultural lands.

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

