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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 rebuttable presumption. (a) Notwithstanding any provision in  
6 this chapter to the contrary, an owner of agricultural land or  
7 range land owes no duty of care to keep the land safe for entry  
8 or use by a trespasser or to give any warning of a dangerous  
9 condition, use, structure, or activity on the land to a  
10 trespasser, except as provided in subsection (c) (1) and (2).

11           (b) There shall be a presumption that an owner of  
12 agricultural land or range land is not liable to a trespasser  
13 for injury, loss, damage, or death occurring on the agricultural  
14 land or range land.

15           (c) In any action for civil damages, the presumption that  
16 an owner of agricultural land or range land is not liable to a  
17 trespasser for injury, loss, damage, or death occurring on the



1 land may be rebutted by a preponderance of the evidence that the  
2 owner:

3 (1) Committed an act or omission that constitutes gross  
4 negligence or wilful or wanton disregard for the  
5 safety of the trespasser and that act or omission  
6 caused the injury, loss, damage, or death; or

7 (2) Intentionally injured the trespasser.

8 (d) As used in this section, unless the context otherwise  
9 requires:

10 "Agricultural land" means land used for agricultural  
11 purposes, including general farming, cane growing, fruit  
12 growing, flower growing, grazing, dairying, the production of  
13 any form of livestock or poultry, and any other form of  
14 agricultural activity. It includes land required for an  
15 adequate farm dwellings and other essential farm buildings,  
16 roads, adjacent lands under the control of an owner.

17 "Invited guest" means any person specifically invited by  
18 the owner or authorized representative of the owner to visit the  
19 agricultural land or range land for social, business, or other  
20 purposes.

21 "Land" means land, roads, water, watercourses, irrigation  
22 systems, private ways and buildings, structures, and machinery



1 or equipment when attached to realty, other than lands owned by  
2 the government.

3 "Owner" means the possessor of a fee interest, a tenant,  
4 lessee, occupant, or person, group, club, partnership, or  
5 corporation in control of the land.

6 "Range land" means privately owned land used for livestock  
7 that is not fenced or divided into paddocks or lots and that is  
8 generally unimproved.

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

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

14 **"§708-814 Criminal trespass in the second degree. (1) A**  
15 **person commits the offense of criminal trespass in the second**  
16 **degree if:**

17 (a) The person knowingly enters or remains unlawfully in  
18 or upon premises that are enclosed in a manner  
19 designed to exclude intruders or are fenced;

20 (b) The person enters or remains unlawfully in or upon  
21 commercial premises after a reasonable warning or  
22 request to leave by the owner or lessee of the



1 commercial premises, the owner's or lessee's  
2 authorized agent, or a police officer; provided that  
3 this paragraph shall not apply to any conduct or  
4 activity subject to regulation by the National Labor  
5 Relations Act.

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

- 12 (i) A warning statement advising the person that the  
13 person's presence is no longer desired on the  
14 property for a period of one year from the date  
15 of the notice, that a violation of the warning  
16 will subject the person to arrest and prosecution  
17 for trespassing pursuant to section  
18 708-814(1)(b), and that criminal trespass in the  
19 second degree is a petty misdemeanor;
- 20 (ii) The legal name, any aliases, and a photograph, if  
21 practicable, or a physical description, including  
22 but not limited to sex, racial extraction, age,



- 1 height, weight, hair color, eye color, or any  
2 other distinguishing characteristics of the  
3 person warned;
- 4 (iii) The name of the person giving the warning along  
5 with the date and time the warning was given; and
- 6 (iv) The signature of the person giving the warning,  
7 the signature of a witness or police officer who  
8 was present when the warning was given and, if  
9 possible, the signature of the violator; or
- 10 (c) The person enters or remains on agricultural lands  
11 without the permission of the owner of the land, the  
12 owner's agent, or the person in lawful possession of  
13 the land, and the agricultural lands [:-  
14 ~~(i) Are fenced, enclosed, or secured in a manner  
15 designed to exclude intruders;~~
- 16 ~~(ii) Have a sign or signs displayed on the unenclosed  
17 cultivated or uncultivated agricultural land  
18 sufficient to give notice and reading as follows:  
19 "Private Property". The sign or signs,  
20 containing letters not less than two inches in  
21 height, shall be placed along the boundary line  
22 of the land and at roads and trails entering the~~



1 ~~land in a manner and position as to be clearly~~  
2 ~~noticeable from outside the boundary line; or~~  
3 ~~(iii) At] at the time of entry, are fallow, or have a~~  
4 ~~visible presence or evidence of livestock-~~  
5 ~~raising, such as cattle, horses, water troughs,~~  
6 ~~shelters, paddocks, or of a crop:~~

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

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

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

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

18 SECTION 5. This Act shall take effect on July 1, 2050.

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**Report Title:**

Landowner Liability; Trespass

**Description:**

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. Effective July 1, 2050. (SD1)

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

