

JAN 20 2011

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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  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

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

5           (a) An owner of land or an occupier of land owes no duty of  
6 care to keep land safe for entry or use by a person who commits  
7 an offense under sections 708-813, 708-814, or 708-815, or to  
8 give warning of a dangerous condition, use, structure, or  
9 activity on the land, and shall not be liable to the person for  
10 any injury or death occurring upon the property during or after  
11 the commission of an offense under chapters 705, 707, 708, 710,  
12 or 711.

13           (b) The limitation on liability under subsection (a)  
14 arises at the moment the injured or deceased person commences  
15 the offense or attempted offense and extends to the moment the  
16 injured or deceased person is no longer upon the property.

17           (c) An owner of land or occupier of land shall not be  
18 liable for any civil damages resulting from the acts or



1 omissions of a person who commits an offense under sections  
2 708-813, 708-814, or 708-815, except for the damages as may  
3 result from the owner of land's or occupier of land's gross  
4 negligence or wilful or wanton acts that caused the injury or  
5 death."

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 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". The sign or signs,  
16           containing letters not less than two inches in  
17           height, shall be placed along the boundary line  
18           of the land and at roads and trails entering the  
19           land in a manner and position as to be clearly  
20           noticeable from outside the boundary line; or
- 21       (iii) At the time of entry, are fallow, or have a  
22           visible presence of a crop:



- 1 (A) Under cultivation;
- 2 (B) In the process of being harvested; or
- 3 (C) That has been harvested.

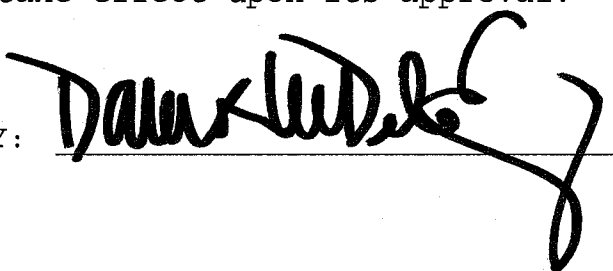
4 (2) Criminal trespass in the second degree is a petty  
5 misdemeanor.

6 (3) As used in this section, "fallow" means lands that are  
7 plowed but left unseeded for a time after successive crops."

8 SECTION 3. 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 4. New statutory material is underscored.

12 SECTION 5. This Act shall take effect upon its approval.

13 INTRODUCED BY: 



**Report Title:**

Trespass; Landowner Liability

**Description:**

Establishes that an owner or possessor of private land that is closed to the public owes no duty of care to a person who commits the offense of criminal trespass on the owner's or occupier's land, except where death or injury to the trespasser may result from the owner's or occupier's gross negligence or wilful conduct; clarifies that provisions related to criminal trespass in the second degree apply to agricultural lands that are fallow.

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

