

JAN 26 2011

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# A BILL FOR AN ACT

RELATING TO TRESPASS.

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

1           SECTION 1. The legislature finds that visitor guide  
2 websites and visitor guide publications may inadvertently invite  
3 visitors to trespass onto remote private property to experience  
4 an attraction or activity. The representations made by these  
5 websites and guide publications put visitors at potential risk  
6 by describing attractions or activities without adequately  
7 explaining the inherent dangers associated with them, often  
8 resulting in serious injury or death to the visitor.  
9 The legislature further finds that because of the nature of the  
10 attraction or activity, the private landowner is unable to  
11 reasonably prevent trespassers from going on or through their  
12 land to get to the dangerous attraction or activity.

13           The purpose of this Act is to:

14           (1) Hold authors and publishers of visitor guide websites  
15           and visitor guide publications liable to individuals  
16           who suffer injury or death as a result of being  
17           enticed to trespass; and



1 (2) Exempt private property owners or legal occupiers of  
2 land from liability for trespassers' injury or death.

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

6 "§663- Visitor guide liability. (a) Any author or  
7 publisher of a visitor guide website or visitor guide  
8 publication shall be civilly liable for injury or death to a  
9 person if the:

10 (1) Visitor guide website or visitor guide publication  
11 encourages, invites, or attracts the person to commit  
12 an offense under section 708-814 on or through  
13 privately owned land; and

14 (2) Person is injured or dies as a result of the person's  
15 reliance upon the visitor guide website or visitor  
16 guide publication's statements in committing an  
17 offense under section 708-814 on or through privately  
18 owned land.

19 (b) The legal owner or legal occupier of land shall not be  
20 liable for any injury or death of any person that occurs while  
21 the person is trespassing pursuant to subsection (a).

22 (c) As used in this section:



1       "Visitor guide publication" means any published book,  
2 pamphlet, magazine, handout, mailer, or advertisement, whether  
3 disseminated via hard copy or electronic distribution that  
4 provides information about a visitor destination, geographic  
5 destination, or natural attraction on privately owned land in  
6 the State.

7       "Visitor guide website" means any commercial travel:

- 8       (1) Website;
- 9       (2) Social media wireless communication;
- 10      (3) Forum;
- 11      (4) Twitter account; or
- 12      (5) Blog;

13 that provides information about a visitor destination,  
14 geographic destination, or natural attraction on privately owned  
15 land in the State."

16       SECTION 3. Section 708-800, Hawaii Revised Statutes, is  
17 amended by amending the definition of "enter or remain  
18 unlawfully" to read as follows:

19       "Enter or remain unlawfully." A person "enters or remains  
20 unlawfully" in or upon premises when the person is not licensed,  
21 invited[7] by the land owner or lawful occupier of the land, or  
22 otherwise privileged to do so. A person who, regardless of the



1 person's intent, enters or remains in or upon premises [which  
2 are] that at the time are open to the public does so with  
3 license and privilege unless the person defies a lawful order  
4 not to enter or remain, personally communicated to the person by  
5 the owner of the premises or some other authorized person. A  
6 license or privilege to enter or remain in a building [which]  
7 that is only partly open to the public is not a license or  
8 privilege to enter or remain in that part of the building  
9 [which] that is not open to the public. [~~A person who enters or  
10 remains upon unimproved and apparently unused land, which is  
11 neither fenced nor otherwise enclosed in a manner designed to  
12 exclude intruders, does so with license and privilege unless  
13 notice against trespass is personally communicated to the person  
14 by the owner of the land or some other authorized person, or  
15 unless notice is given by posting in a conspicuous manner.]"~~

16 SECTION 4. Section 708-814, Hawaii Revised Statutes, is  
17 amended by amending subsection (1) to read as follows:

18 "(1) A person commits the offense of criminal trespass in  
19 the second degree if:

20 (a) The person knowingly enters or remains unlawfully in  
21 or upon premises that are enclosed in a manner  
22 designed to exclude intruders or are fenced;



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

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

15 (i) A warning statement advising the person that the  
16 person's presence is no longer desired on the  
17 property for a period of one year from the date  
18 of the notice, that a violation of the warning  
19 will subject the person to arrest and prosecution  
20 for trespassing pursuant to section  
21 708-814(1)(b), and that criminal trespass in the  
22 second degree is a petty misdemeanor;



1 (ii) The legal name, any aliases, and a photograph, if  
2 practicable, or a physical description, including  
3 but not limited to sex, racial extraction, age,  
4 height, weight, hair color, eye color, or any  
5 other distinguishing characteristics of the  
6 person warned;

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

9 (iv) The signature of the person giving the warning,  
10 the signature of a witness or police officer who  
11 was present when the warning was given and, if  
12 possible, the signature of the violator; [eæ]

13 (c) The person enters or remains on agricultural lands  
14 without the permission of the owner of the land, the  
15 owner's agent, or the person in lawful possession of  
16 the land, and the agricultural lands:

17 (i) Are fenced, enclosed, or secured in a manner  
18 designed to exclude intruders;

19 (ii) Have a sign or signs displayed on the unenclosed  
20 cultivated or uncultivated agricultural land  
21 sufficient to give notice and reading as follows:

22 "Private Property" [-] or "No Trespassing". The



1 sign or signs, containing letters not less than  
2 two inches in height, shall be placed along the  
3 boundary line of the land and at roads and trails  
4 entering the land in a manner and position as to  
5 be clearly noticeable from outside the boundary  
6 line; or

7 (iii) At the time of entry, have a visible presence of  
8 a crop:

9 (A) Under cultivation;

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

11 (C) That has been harvested[-]; or

12 (d) The person enters or remains on unimproved or unused  
13 private lands without the permission of the owner of  
14 the land, the owner's agent, or the lawful occupier of  
15 land, and the lands:

16 (i) Are fenced, enclosed, or secured in a manner  
17 designed to exclude intruders; or

18 (ii) Have a sign or signs displayed on the unimproved  
19 or unused private land sufficient to give notice  
20 and reading as follows: "Private Property" or  
21 "No Trespassing". The sign or signs, containing  
22 letters not less than two inches in height, shall



1                   be placed along the boundary line of the land and  
2                   at roads and trails entering the land in a manner  
3                   and position as to be clearly noticeable from  
4                   outside the boundary line."

5           SECTION 5. This Act does not affect rights and duties that  
6 matured, penalties that were incurred, and proceedings that were  
7 begun before its effective date.

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

10          SECTION 7. This Act shall take effect upon its approval.

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INTRODUCED BY:           Mel P. H.            
          Diane Mercado



**Report Title:**

Trespass; Websites; Liability

**Description:**

Holds authors and publishers of visitor websites and publications liable to readers who suffer injury or death as a result of being enticed to trespass; exempts property owners from liability.

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

