
A BILL FOR AN ACT

RELATING TO TRESPASS.

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

1 SECTION 1. Chapter 199, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§199- Criminal trespass on agricultural lands
5 enforcement fund; established. (a) There is established in the
6 state treasury the criminal trespass on agricultural lands
7 enforcement fund to be administered by the department of land
8 and natural resources.

9 (b) The following shall be deposited into the special
10 fund:

11 (1) Legislative appropriations to the fund;

12 (2) Moneys received from fines collected pursuant to
13 subsection 708-814(2);

14 (3) All interest earned or accrued on moneys deposited in
15 the special fund; and

16 (4) Any other moneys made available to the fund.

17 (c) Moneys in the fund shall be expended for enforcement
18 of section 708-814(1)(c); provided that moneys deposited into



1 the fund pursuant to subsection (b)(2) shall be expended only
2 for enforcement in the county in which the violation occurred."

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- Trespass on agricultural or range land; no duty
7 of care; liability of owner; rebuttable presumption. (a)

8 Notwithstanding any provision in this chapter to the contrary,
9 an owner of agricultural land or range land owes no duty of care
10 to keep the land safe for entry or use by a trespasser or to
11 give any warning of a dangerous condition, use, structure, or
12 activity on the land to a trespasser.

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

16 (c) In any action for civil damages, the presumption that
17 an owner of agricultural land or range land is not liable to a
18 trespasser for injury, loss, damage, or death occurring on the
19 land may be rebutted by a preponderance of the evidence that the
20 owner:

21 (1) Committed an act or omission that constitutes gross
22 negligence or wilful or wanton disregard for the



1 safety of the trespasser and that act or omission
2 caused the injury, loss, damage, or death; or

3 (2) Intentionally injured the trespasser.

4 (d) As used in this section, unless the context otherwise
5 requires:

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

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

16 "Land" means land, roads, water, watercourses, and private
17 ways; and buildings, structures, machinery and equipment when
18 attached to realty; provided that the term shall not include
19 lands owned by the government.

20 "Owner" means the possessor of a fee interest, a tenant,
21 lessee, occupant, person, group, club, partnership, or
22 corporation in control of the land.



1 "Range land" means privately owned land used for livestock
2 that is not fenced or divided into paddocks or lots and that is
3 generally unimproved.

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

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

9 "**§708-814 Criminal trespass in the second degree.** (1) A
10 person commits the offense of criminal trespass in the second
11 degree if:

12 (a) The person knowingly enters or remains unlawfully in
13 or upon premises that are enclosed in a manner
14 designed to exclude intruders or are fenced;

15 (b) The person enters or remains unlawfully in or upon
16 commercial premises after a reasonable warning or
17 request to leave by the owner or lessee of the
18 commercial premises, the owner's or lessee's
19 authorized agent, or a police officer; provided that
20 this paragraph shall not apply to any conduct or
21 activity subject to regulation by the National Labor
22 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;

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] at the time of entry, are fallow or have a~~
22 visible presence of livestock or a crop:



- 1 ~~[(A)]~~ (i) Under cultivation;
- 2 ~~[(B)]~~ (ii) In the process of being harvested; or
- 3 ~~[(C)]~~ (iii) That has been harvested; or
- 4 (d) The person enters or remains unlawfully on unimproved
- 5 or unused lands without the permission of the owner of
- 6 the land, the owner's agent, or the person in lawful
- 7 possession of the land, and the lands:
- 8 (i) Are fenced, enclosed, or secured in a manner
- 9 designed to exclude the general public; or
- 10 (ii) Have a sign or signs displayed on the unenclosed,
- 11 unimproved, or unused land sufficient to give
- 12 reasonable notice and reads as follows: "Private
- 13 Property - No Trespassing", "Government Property
- 14 - No Trespassing", or a substantially similar
- 15 message; provided that the sign or signs shall
- 16 contain letters not less than two inches in
- 17 height and shall be placed at reasonable
- 18 intervals along the boundary line of the land and
- 19 at roads and trails entering the land in a manner
- 20 and position as to be clearly noticeable from
- 21 outside the boundary line.



1 For the purposes of this paragraph, "unimproved
2 or unused lands" means any land upon which there is no
3 improvement; construction of any structure, building,
4 or facility; or alteration of the land by grading,
5 dredging, or mining that would cause a permanent
6 change in the land or that would change the basic
7 natural condition of the land. Land remains
8 "unimproved or unused land" under this paragraph
9 notwithstanding minor improvements, including the
10 installation or maintenance of utility poles, signage,
11 and irrigation facilities or systems; minor
12 alterations undertaken for the preservation or prudent
13 management of the unimproved or unused land, including
14 the installation or maintenance of fences, trails, or
15 pathways; maintenance activities, including forest
16 plantings and the removal of weeds, brush, rocks,
17 boulders, or trees; and the removal or securing of
18 rocks or boulders undertaken to reduce risk to
19 downslope properties.

20 (2) Criminal trespass in the second degree is a petty
21 misdemeanor[-]; provided that a fine of up to \$10,000 may be
22 imposed for a violation of subsection (1)(c), which shall be



1 deposited into the criminal trespass on agricultural lands
2 enforcement fund under section 199- ."

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

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

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

9

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H.B. NO. 1332

Report Title:

Landowner Liability; Trespass; Agricultural Land; fund

Description:

Establishes a criminal trespass on agricultural lands enforcement fund. Provides that owners of agricultural or range land have no duty of care to trespassers. Limits criminal trespass on agricultural lands in the second degree to lands that are fallow or have a visible presence of livestock or a crop and authorizes fines of up to \$10,000 for the offense.

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

