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# A BILL FOR AN ACT

RELATING TO CRIMINAL TRESPASS.

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

1           SECTION 1. The legislature finds that it is necessary to  
2 establish a new criminal trespass offense to protect against  
3 people remaining on improved state land when it is closed or  
4 otherwise restricted, or on or under state highways.

5           The legislature further finds that the offense of criminal  
6 trespass in the second degree should be amended to include  
7 government agricultural lands that are not fenced, enclosed, or  
8 secured in a manner designed to exclude intruders when there is  
9 appropriate signage giving notice that the property is  
10 government property and trespassing is prohibited.

11           This Act is not intended to abridge the constitutional  
12 rights of persons who are homeless. These include their rights  
13 under the Eighth Amendment of the United States Constitution and  
14 their corresponding rights under article I, section 12, of the  
15 Constitution of the State of Hawaii to be free from cruel and  
16 unusual punishment.



1 SECTION 2. Chapter 708, Hawaii Revised Statutes, is  
2 amended by adding to part II a new section to be appropriately  
3 designated and to read as follows:

4 "§708- Criminal trespass onto state lands. (1) Except  
5 for lands owned by the office of Hawaiian affairs, and except  
6 for improved state lands that are designated safe havens by  
7 state departments or agencies, or that are under executive order  
8 by the governor to be used as a safe haven and have a department  
9 of health component and adequate space, not to include state  
10 hospitals, a person commits the offense of criminal trespass  
11 onto state lands if:

12 (a) The person enters or remains unlawfully in or upon any  
13 improved state land when:

14 (i) The land is closed to public use and its closure  
15 hours are posted on a sign or signs on the  
16 improved state land, and after a request to leave  
17 is made by any law enforcement officer the person  
18 remains in or upon the land; or

19 (ii) The land is not open to the public and there are  
20 signs that are sufficient to give reasonable  
21 notice that read: "Government Property - No



1           Trespassing"; provided that these signs shall  
2           contain letters no less than two inches in height  
3           and shall be placed at reasonable intervals no  
4           less than three signs to a mile along the  
5           boundary line of the land and at all roads and  
6           trails entering the land in a manner and position  
7           as to be clearly noticeable from outside the  
8           boundary; or

9           (b) The person enters or remains unlawfully in or upon any  
10           state land on or under any highway, and the state land  
11           has a sign or signs displayed upon the land that are  
12           sufficient to give reasonable notice that read:  
13           "Government Property - No Trespassing"; provided that  
14           the signs shall contain letters no less than two  
15           inches in height and shall be placed at reasonable  
16           intervals no less than three signs to a mile along the  
17           boundary line of the land and at all roads and trails  
18           entering the land in a manner and position as to be  
19           clearly noticeable from outside the boundary.

20           (2) Criminal trespass onto state lands is a petty  
21           misdemeanor.



1        (3) For the purposes of this section, unless the context  
2 requires otherwise:

3        "Highway" has the same meaning as in section 286-2.

4        "Improved state land" means any state land, including but  
5 not limited to harbors under the care and control of the  
6 department of transportation under chapter 266, and small boat  
7 harbors under the care and control of the department of land and  
8 natural resources under chapter 200, upon which there is  
9 improvement, including any structure, building, or facility; or  
10 alteration of the land by grading, dredging, or mining that  
11 would cause a permanent change in the land or that would change  
12 the basic natural condition of the land. Land is not "improved  
13 state land" if it only has minor improvements, including utility  
14 poles, signage, and irrigation facilities or systems; or minor  
15 alterations undertaken for the preservation or prudent  
16 management of the unimproved or unused land, including fences,  
17 trails, or pathways. Land is not "improved state land" solely  
18 due to the performance of state maintenance activities on the  
19 land, including forest plantings and the removal of weeds,  
20 brush, rocks, boulders, or trees; or removal or securing of



1 rocks or boulders undertaken to reduce risk to downslope  
2 properties.

3 "State lands" means all land owned by the State through any  
4 of its departments or agencies.

5 (4) No conviction under this section shall be used to  
6 establish a felony conviction under section 708-803."

7 SECTION 3. Section 708-814, Hawaii Revised Statutes, is  
8 amended by amending subsection (1) to read as follows:

9 "(1) A person commits the offense of criminal trespass in  
10 the second 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 708-~~  
13 ~~814(1)(b)-7~~] this subsection, and that criminal  
14 trespass in the second degree is a petty  
15 misdemeanor;

16           (ii) The legal name, any aliases, and a photograph, if  
17 practicable, or a physical description, including  
18 but not limited to sex, racial extraction, age,  
19 height, weight, hair color, eye color, or any  
20 other distinguishing characteristics of the  
21 person warned;



- 1 (iii) The name of the person giving the warning along  
2 with the date and time the warning was given; and  
3 (iv) The signature of the person giving the warning,  
4 the signature of a witness or police officer who  
5 was present when the warning was given and, if  
6 possible, the signature of the violator;
- 7 (c) The person enters or remains unlawfully on  
8 agricultural lands without the permission of the owner  
9 of the land, the owner's agent, or the person in  
10 lawful possession of the land, and the agricultural  
11 lands:
- 12 (i) Are fenced, enclosed, or secured in a manner  
13 designed to exclude intruders;
- 14 (ii) Have a sign or signs displayed on the unenclosed  
15 cultivated or uncultivated agricultural land  
16 sufficient to give notice and reading as follows:  
17 "Private Property" [-] or "Government Property -  
18 No Trespassing". The sign or signs, containing  
19 letters [ææt] no less than two inches in height,  
20 shall be placed at reasonable intervals no less  
21 than three signs to a mile along the boundary



1 line of the land and at roads and trails entering  
2 the land in a manner and position as to be  
3 clearly noticeable from outside the boundary  
4 line; or  
5 (iii) At the time of entry, are fallow or have a  
6 visible presence of livestock or a crop:  
7 (A) Under cultivation;  
8 (B) In the process of being harvested; or  
9 (C) That has been harvested;  
10 (d) The person enters or remains unlawfully on unimproved  
11 or unused lands without the permission of the owner of  
12 the land, the owner's agent, or the person in lawful  
13 possession of the land, and the lands:  
14 (i) Are fenced, enclosed, or secured in a manner  
15 designed to exclude the general public; or  
16 (ii) Have a sign or signs displayed on the unenclosed,  
17 unimproved, or unused land sufficient to give  
18 reasonable notice and reads as follows: "Private  
19 Property - No Trespassing", "Government Property  
20 - No Trespassing", or a substantially similar  
21 message; provided that the sign or signs shall





1 contain letters [~~not~~] no less than two inches in  
2 height and shall be placed at reasonable  
3 intervals no less than three signs to a mile  
4 along the boundary line of the land and at roads  
5 and trails entering the land in a manner and  
6 position as to be clearly noticeable from outside  
7 the boundary line.

8 For the purposes of this paragraph, "unimproved  
9 or unused lands" means any land upon which there is no  
10 improvement; construction of any structure, building,  
11 or facility; or alteration of the land by grading,  
12 dredging, or mining that would cause a permanent  
13 change in the land or that would change the basic  
14 natural condition of the land. Land remains  
15 "unimproved or unused land" under this paragraph  
16 notwithstanding minor improvements, including the  
17 installation or maintenance of utility poles, signage,  
18 and irrigation facilities or systems; minor  
19 alterations undertaken for the preservation or prudent  
20 management of the unimproved or unused land, including  
21 the installation or maintenance of fences, trails, or



1 pathways; maintenance activities, including forest  
2 plantings and the removal of weeds, brush, rocks,  
3 boulders, or trees; and the removal or securing of  
4 rocks or boulders undertaken to reduce risk to  
5 downslope properties; or

- 6 (e) The person enters or remains unlawfully in or upon the  
7 premises of any public housing project or state low-  
8 income housing project, as defined in section 356D-1,  
9 356D-51, or 356D-91, after a reasonable warning or  
10 request to leave by housing authorities or a police  
11 officer, based upon an alleged violation of law or  
12 administrative rule; provided that a warning or  
13 request to leave shall not be necessary between 10:00  
14 p.m. and 5:00 a.m. at any public housing project or  
15 state low-income housing project that is closed to the  
16 public during those hours and has signs, containing  
17 letters ~~[ææ]~~ no less than two inches in height,  
18 placed at reasonable intervals no less than three  
19 signs to a mile along the boundary of the project  
20 property~~[7]~~ and at all entrances to the property, in a  
21 manner and position to be clearly noticeable from



1 outside the boundary of the project property and to  
2 give sufficient notice that the public housing project  
3 or state low-income housing project is closed to the  
4 public during those hours."

5 SECTION 4. The department of the attorney general shall  
6 submit a written report to the legislature regarding the extent  
7 to which this Act has been utilized, including any proposed  
8 legislation, no later than twenty days prior to the convening of  
9 the regular sessions of 2018, 2019, and 2020.

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

13 SECTION 6. This Act does not affect native Hawaiian  
14 traditional and customary rights as set forth in the state  
15 constitution.

16 SECTION 7. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

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



**Report Title:**

Criminal Trespass; State Lands; State Highways

**Description:**

Establishes the offense of criminal trespass onto state lands to the penal code. Amends the offense of criminal trespass in the second degree to apply to government agricultural property regardless of whether it is fenced, enclosed, or otherwise secured. (CD1)

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

