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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) A  
5 person commits the offense of criminal trespass onto state lands  
6 if:

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

9 (i) The land is closed to public use and its closure  
10 hours are posted on a sign or signs on the  
11 improved state land; or  
12 (ii) The land is not open to the public and there are  
13 signs that are sufficient to give reasonable  
14 notice that read: "Government Property - No  
15 Trespassing"; provided that these signs shall  
16 contain letters no less than two inches in height  
17 and shall be placed at reasonable intervals along  
18 the boundary line of the land and at roads and  
19 trails entering the land in a manner and position  
20 as to be clearly noticeable from outside the  
21 boundary line; or



1        (b) The person enters or remains unlawfully in or upon any  
2        state land on or under any highway, and the state land  
3        has a sign or signs displayed upon the land that are  
4        sufficient to give reasonable notice that read:  
5        "Government Property - No Trespassing"; provided that  
6        the signs shall contain letters no less than two  
7        inches in height and shall be placed at reasonable  
8        intervals along the boundary line of the land, and at  
9        roads and trails entering the land in a manner and  
10       position as to be clearly noticeable from outside the  
11       boundary line.

12       (2) Criminal trespass onto state lands is a petty  
13       misdemeanor.

14       (3) For the purposes of this section, unless the context  
15       requires otherwise:

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

17       "Improved state land" means any state land, including but  
18       not limited to harbors under the care and control of the  
19       department of transportation under chapter 266, and small boat  
20       harbors under the care and control of the department of land and  
21       natural resources under chapter 200, upon which there is



1 improvement, including any structure, building, or facility; or  
2 alteration of the land by grading, dredging, or mining that  
3 would cause a permanent change in the land or that would change  
4 the basic natural condition of the land. Land is not "improved  
5 state land" if it only has minor improvements, including utility  
6 poles, signage, and irrigation facilities or systems; or minor  
7 alterations undertaken for the preservation or prudent  
8 management of the unimproved or unused land, including fences,  
9 trails, or pathways. Land is not "improved state land" solely  
10 due to the performance of state maintenance activities on the  
11 land, including forest plantings and the removal of weeds,  
12 brush, rocks, boulders, or trees; or removal or securing of  
13 rocks or boulders undertaken to reduce risk to downslope  
14 properties.

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

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

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



1 (a) The person knowingly enters or remains unlawfully in  
2 or upon premises that are enclosed in a manner  
3 designed to exclude intruders or are fenced;

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

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

18 (i) A warning statement advising the person that the  
19 person's presence is no longer desired on the  
20 property for a period of one year from the date  
21 of the notice, that a violation of the warning



1 will subject the person to arrest and prosecution  
2 for trespassing pursuant to [~~section 708-~~  
3 ~~§14(1)(b)~~,] this subsection, and that criminal  
4 trespass in the second degree is a petty  
5 misdemeanor;

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

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

14 (iv) The signature of the person giving the warning,  
15 the signature of a witness or police officer who  
16 was present when the warning was given and, if  
17 possible, the signature of the violator;

18 (c) The person enters or remains unlawfully on  
19 agricultural lands without the permission of the owner  
20 of the land, the owner's agent, or the person in



- 1 lawful possession of the land, and the agricultural  
2 lands:
- 3 (i) Are fenced, enclosed, or secured in a manner  
4 designed to exclude intruders;
- 5 (ii) Have a sign or signs displayed on the unenclosed  
6 cultivated or uncultivated agricultural land  
7 sufficient to give notice and reading as follows:  
8 "Private Property" [-] or "Government Property -  
9 No Trespassing". The sign or signs, containing  
10 letters [~~not~~] no less than two inches in height,  
11 shall be placed at reasonable intervals along the  
12 boundary line of the land and at roads and trails  
13 entering the land in a manner and position as to  
14 be clearly noticeable from outside the boundary  
15 line; or
- 16 (iii) At the time of entry, are fallow or have a  
17 visible presence of livestock or a crop:
- 18 (A) Under cultivation;
- 19 (B) In the process of being harvested; or
- 20 (C) That has been harvested;



1 (d) The person enters or remains unlawfully on unimproved  
2 or unused lands without the permission of the owner of  
3 the land, the owner's agent, or the person in lawful  
4 possession of the land, and the lands:

- 5 (i) Are fenced, enclosed, or secured in a manner  
6 designed to exclude the general public; or
- 7 (ii) Have a sign or signs displayed on the unenclosed,  
8 unimproved, or unused land sufficient to give  
9 reasonable notice and reads as follows: "Private  
10 Property - No Trespassing", "Government Property  
11 - No Trespassing", or a substantially similar  
12 message; provided that the sign or signs shall  
13 contain letters not less than two inches in  
14 height and shall be placed at reasonable  
15 intervals along the boundary line of the land and  
16 at roads and trails entering the land in a manner  
17 and position as to be clearly noticeable from  
18 outside the boundary line.

19 For the purposes of this paragraph, "unimproved  
20 or unused lands" means any land upon which there is no  
21 improvement; construction of any structure, building,





1 or facility; or alteration of the land by grading,  
2 dredging, or mining that would cause a permanent  
3 change in the land or that would change the basic  
4 natural condition of the land. Land remains  
5 "unimproved or unused land" under this paragraph  
6 notwithstanding minor improvements, including the  
7 installation or maintenance of utility poles, signage,  
8 and irrigation facilities or systems; minor  
9 alterations undertaken for the preservation or prudent  
10 management of the unimproved or unused land, including  
11 the installation or maintenance of fences, trails, or  
12 pathways; maintenance activities, including forest  
13 plantings and the removal of weeds, brush, rocks,  
14 boulders, or trees; and the removal or securing of  
15 rocks or boulders undertaken to reduce risk to  
16 downslope properties; or

17 (e) The person enters or remains unlawfully in or upon the  
18 premises of any public housing project or state low-  
19 income housing project, as defined in section 356D-1,  
20 356D-51, or 356D-91, after a reasonable warning or  
21 request to leave by housing authorities or a police



1 officer, based upon an alleged violation of law or  
2 administrative rule; provided that a warning or  
3 request to leave shall not be necessary between 10:00  
4 p.m. and 5:00 a.m. at any public housing project or  
5 state low-income housing project that is closed to the  
6 public during those hours and has signs, containing  
7 letters [~~not~~] no less than two inches in height,  
8 placed along the boundary of the project property, at  
9 all entrances to the property, in a manner and  
10 position to be clearly noticeable from outside the  
11 boundary of the project property and to give  
12 sufficient notice that the public housing project or  
13 state low-income housing project is closed to the  
14 public during those hours."

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



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

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

6 SECTION 7. This Act shall take effect on January 7, 2059.

7



**Report Title:**

Criminal Trespass; State Lands; State Highways

**Description:**

Establishes the offense of criminal trespass onto state lands to the penal code. Amends the offenses of criminal trespass in the second degree to apply to government agricultural property regardless of whether it is fenced, enclosed, or otherwise secured. Takes effect on 1/7/2059. (SD1)

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

