

H.B. NO. 1029

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 add a new criminal trespass section to protect against people
3 remaining on improved state land when it is closed or otherwise
4 restricted, and 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 that trespassing is prohibited.

11 This Act cannot and is not intended to abridge the
12 constitutional rights of persons who are homeless. These
13 include their rights under the Eighth Amendment of the United
14 States Constitution and their corresponding rights under Article
15 I, Section 12 of the Constitution of the State of Hawaii to be
16 free from cruel and 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 sufficient to give reasonable notice that
14 read: "Government Property - No Trespassing";
15 provided that such signs shall contain letters
16 not less than two inches in height and shall be
17 placed at reasonable intervals along the boundary
18 line of the land and at roads and trails entering
19 the land in a manner and position as to be
20 clearly noticeable from outside the boundary
21 line; or

22 (b) The person enters or remains unlawfully in or upon any
23 state land on or under any highway, and the state land

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1 has a sign or signs displayed upon the land sufficient
2 to give reasonable notice that read: "Government
3 Property - No Trespassing"; provided that the signs
4 shall contain letters not less than two inches in
5 height and shall be placed at reasonable intervals
6 along the boundary line of the land and at roads and
7 trails entering the land in a manner and position as
8 to be clearly noticeable from outside the boundary
9 line.

10 (2) For the purposes of this section, unless the context
11 requires otherwise:

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

13 "Improved state land" means any state land upon which there
14 is improvement, including any structure, building, or facility;
15 or alteration of the land by grading, dredging, or mining that
16 would cause a permanent change in the land or that would change
17 the basic natural condition of the land, including but not
18 limited to harbors under the care and control of the department
19 of transportation under chapter 266, and small boat harbors
20 under the care and control of the department of land and natural
21 resources under chapter 200. Land is not "improved state land"
22 if it only has minor improvements, including utility poles,
23 signage, and irrigation facilities or systems; or minor

1 alterations undertaken for the preservation or prudent
2 management of the unimproved or unused land, including fences,
3 trails, or pathways. Land is not "improved state land" solely
4 due to state maintenance activities, including forest plantings
5 and the removal of weeds, brush, rocks, boulders, or trees; or
6 removal or securing of rocks or boulders undertaken to reduce
7 risk to downslope properties.

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

10 (3) Criminal trespass onto state lands is a petty
11 misdemeanor."

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

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

16 (a) The person knowingly enters or remains unlawfully in
17 or upon premises that are enclosed in a manner
18 designed to exclude intruders or are fenced;

19 (b) The person enters or remains unlawfully in or upon
20 commercial premises after a reasonable warning or
21 request to leave by the owner or lessee of the
22 commercial premises, the owner's or lessee's
23 authorized agent, or a police officer; provided that

1 this paragraph shall not apply to any conduct or
2 activity subject to regulation by the National Labor
3 Relations Act.

4 For the purposes of this paragraph, "reasonable
5 warning or request" means a warning or request communicated in
6 writing at any time within a one-year period inclusive of the
7 date the incident occurred, which may contain but is not limited
8 to the following information:

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

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

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- 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
17 follows: "Private Property" [-] or "Government
18 Property - No Trespassing". The sign or signs,
19 containing letters not less than two inches in
20 height, shall be placed along the boundary line
21 of the land and at roads and trails entering the
22 land in a manner and position as to be clearly
23 noticeable from outside the boundary line; or

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

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1 For the purposes of this paragraph,
2 "unimproved or unused lands" means any land upon which
3 there is no improvement; construction of any
4 structure, building, or facility; or alteration of the
5 land by grading, dredging, or mining that would cause
6 a permanent change in the land or that would change
7 the basic 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; or

- 20 (e) The person enters or remains unlawfully in or upon the
21 premises of any public housing project or state low-
22 income housing project, as defined in section 356D-1,
23 356D-51, or 356D-91, after a reasonable warning or

1 request to leave by housing authorities or a police
2 officer, based upon an alleged violation of law or
3 administrative rule; provided that a warning or
4 request to leave shall not be necessary between 10:00
5 p.m. and 5:00 a.m. at any public housing project or
6 state low-income housing project that is closed to the
7 public during those hours and has signs, containing
8 letters not less than two inches in height, placed
9 along the boundary of the project property, at all
10 entrances to the property, in a manner and position to
11 be clearly noticeable from outside the boundary of the
12 project property and to give sufficient notice that
13 the public housing project or state low-income housing
14 project is closed to the 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 session of 2018.

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

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1 SECTION 6. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 7. This Act shall take effect on July 1, 2017.

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INTRODUCED BY: 

BY REQUEST

JAN 23 2017

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Report Title:

Criminal Trespass; State Lands; State Highways

Description:

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

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

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO CRIMINAL TRESPASS

PURPOSE: The purposes of this bill are (1) to create the new offense of criminal trespass onto state lands, to be added to amend chapter 708, Hawaii Revised Statutes, and (2) to amend the offense of criminal trespass in the second degree to include: (a) improved state land when it is closed or otherwise restricted, (b) any state land on or under any highway having a sign or signs restricting access, and (c) government agricultural lands that are not fenced, enclosed, or secured in a manner designed to exclude intruders.

MEANS: Add a new section to part II of chapter 708, and amend section 708-814(1), Hawaii Revised Statutes.

JUSTIFICATION: Current criminal trespass laws apply to dwellings, hotels, apartment buildings, public and private schools, fenced or enclosed properties, commercial properties, certain agricultural lands, unimproved or unused lands, public housing projects and low-income housing projects, and public parks and recreational grounds. It is not clear, however, that current criminal trespass laws would apply to improved state lands, state land on or under any highway, or unfenced, unenclosed, or unsecured agricultural lands owned by the government. This effectively leaves a gap in the criminal trespass law that leaves certain state lands without protection from criminal trespass.

Impact on the public: The public would benefit because this new law would preserve and protect state land.

Impact on the department and other agencies: The Department would benefit because it would clarify that the criminal trespass laws applies to all state lands.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: ATG 100.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: July 1, 2017.