

ACT 181

H.B. NO. 1202

A Bill for an Act Relating to Agricultural Trespassing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that agricultural theft is a critical problem for Hawaii's farmers. Millions of dollars in agricultural products and equipment have been lost due to theft. This monetary cost is in addition to the time spent by farmers to replace stolen equipment and replant stolen products. Farmers are especially vulnerable to theft since farms are usually located on large plots of land in sparsely populated areas, and are isolated from law enforcement. Many farmers have fences and other simple barriers surrounding their property that are easily overcome by thieves and do little to deter trespassing.

The legislature finds that the current law inadequately deals with the problem of trespassing on agricultural lands.

The purpose of this Act is to deter trespassing on agricultural lands by providing that a person commits the offense of criminal trespass in the second degree if the person, without permission, enters or remains on agricultural land under certain conditions.

SECTION 2. Section 708-814, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

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

- (a) The person knowingly enters or remains unlawfully in or upon premises that are enclosed in a manner designed to exclude intruders or are fenced; [or]
- (b) The person enters or remains unlawfully in or upon commercial premises or public property after a reasonable warning or request to leave by the owner or lessee of the commercial premises or public property, the owner's or lessee's authorized agent, or a police officer; provided that this paragraph shall not apply to any conduct or activity subject to regulation by the National Labor Relations Act.

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

- (i) A warning statement advising the person that the person's presence is no longer desired on the property for a period of one year from the date of the notice, that a violation of the warning will subject the person to arrest and prosecution for trespassing pursuant to section 708-814(1)(b), and that criminal trespass in the second degree is a petty misdemeanor;
- (ii) The legal name, any aliases, and a photograph, if practicable, or a physical description including but not limited to sex, racial extraction, age, height, weight, hair color, eye color, or any other distinguishing characteristics of the person warned;
- (iii) The name of the person giving the warning along with the date and time the warning was given; and
- (iv) The signature of the person giving the warning, the signature of a witness or police officer who was present when the warning was given and, if possible, the signature of the violator[-]; or

- (c) The person enters or remains on agricultural lands without the permission of the owner of the land, the owner's agent, or the person in lawful possession of the land, and the agricultural lands:
- (i) Are fenced, enclosed, or secured in a manner designed to exclude intruders;
 - (ii) Have a sign or signs displayed on the unenclosed cultivated or uncultivated agricultural land sufficient to give notice and reading as follows: "Private Property." The sign or signs, containing letters not less than two inches in height, shall be placed along the boundary line of the land and at roads and trails entering the land in a manner and position as to be clearly noticeable from outside the boundary line; or
 - (iii) At the time of entry, have a visible presence of a crop:
 - (A) Under cultivation;
 - (B) In the process of being harvested; or
 - (C) That has been harvested."

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

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

SECTION 5. This Act shall take effect upon its approval.

(Approved July 1, 2005.)