

ACT 208

H.B. NO. 227

A Bill for an Act Relating to Trespass.

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

SECTION 1. Section 708-800, Hawaii Revised Statutes, is amended by amending the definition of “enter or remain unlawfully” to read as follows:

““Enter or remain unlawfully[.]” ~~A person “enters or remains unlawfully”~~ means to enter or remain in or upon premises when the person is not licensed, invited, or otherwise privileged to do so. A person who, regardless of the person’s intent, enters or remains in or upon premises which are at the time open to the public does so with license and privilege unless the person defies a lawful order not to enter or remain, personally communicated to the person by the owner of the premises or some other authorized person. A license or privilege to enter or remain in a building which is only partly open to the public is not a license or privilege to enter or remain in that part of the building which is not open to the public. ~~[A person who enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, does so with license and privilege unless notice against trespass is personally communicated to the person by the owner of the land or some other authorized person, or unless notice is given by posting in a conspicuous manner.]”~~

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;
- (b) The person enters or remains unlawfully in or upon commercial premises after a reasonable warning or request to leave by the owner or lessee of the commercial premises, 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 the 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; [øf]
- (c) The person enters or remains unlawfully 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, are fallow or have a visible presence of livestock or a crop:
 - (A) Under cultivation;
 - (B) In the process of being harvested; or
 - (C) That has been harvested[-]; or
- (d) The person enters or remains unlawfully on unimproved or unused 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 lands:
- (i) Are fenced, enclosed, or secured in a manner designed to exclude the general public; or
 - (ii) Have a sign or signs displayed on the unenclosed, unimproved, or unused land sufficient to give reasonable notice and reads as follows: "Private Property – No Trespassing", "Government Property – No Trespassing", or a substantially similar message; provided that the sign or signs shall contain letters not less than two inches in height and shall be placed at reasonable intervals 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.

For the purposes of this paragraph, "unimproved or unused lands" means any land upon which there is no improvement; construction of any structure, building, or facility; or alteration of the land by grading, dredging, or mining

that would cause a permanent change in the land or that would change the basic natural condition of the land. Land remains “unimproved or unused land” under this paragraph notwithstanding minor improvements, including the installation or maintenance of utility poles, signage, and irrigation facilities or systems; minor alterations undertaken for the preservation or prudent management of the unimproved or unused land, including the installation or maintenance of fences, trails, or pathways; maintenance activities, including forest plantings and the removal of weeds, brush, rocks, boulders, or trees; and the removal or securing of rocks or boulders undertaken to reduce risk to downslope properties.”

SECTION 3. Chapter 663, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

“§663- Trespass; limited liability of agricultural land owner. (a) An owner of agricultural land shall not be liable for any injury, death, loss, or damage suffered by a trespasser on the owner’s agricultural land, unless the injury, death, loss, or damage was:

- (1) Intentionally inflicted upon the trespasser by the owner of the land;
or
- (2) Caused by the gross negligence of the owner of the land.

(b) For purposes of this section, unless the context otherwise requires: “Agricultural land” means any land in excess of four acres used primarily for a farming operation, as defined in section 165-2; provided that the term shall include land used for farm buildings and dwellings and roads and irrigation infrastructure associated with the agricultural land.

“Fallow” means land associated with agricultural production that is left unseeded or unplanted for one or more growing seasons.

“Owner” means the possessor of a fee interest, a tenant, lessee, occupant, or person, group, club, partnership, family, organization, entity, or corporation that is in control, possession, or use of the land, and their members, agents, partners, representatives, shareholders, and employees.

“Trespasser” means a person who enters or remains unlawfully on the agricultural land without the permission of the owner, and the lands:

- (1) Are fenced, enclosed, secured in a manner designed to exclude the general public, or marked by a structure or barrier, including a cattle grid, cattle grate, or other obstacle used to secure livestock;
- (2) Have a sign or signs displayed on the land that are sufficient to give reasonable notice and that read as follows: “No Trespassing” or a substantially similar message; provided that the sign or signs shall consist of letters not less than two inches in height and shall be placed at reasonable intervals 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
- (3) At the time of entry, are fallow or have a visible presence or evidence of livestock-raising, such as cattle, horses, water troughs, shelters, or paddocks, or a crop:
 - (A) Under cultivation;
 - (B) In the process of being harvested; or
 - (C) That has been harvested.”

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

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 6. This Act shall take effect on July 1, 2011.

(Approved July 8, 2011.)

Note

1. Edited pursuant to HRS §23G-16.5.