

ACT 125

H.B. NO. 1524

A Bill for an Act Relating to Agricultural Theft.

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

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

“§708- Theft; agricultural product; sentencing. (1) Whenever a person is sentenced under sections 708-830.5, 708-831, 708-832, or 708-833, for an offense involving theft of an agricultural product or commodity, in addition to any penalty prescribed by those sections, the person shall be required to make payment to the property owner for:

- (a) The value of the stolen agricultural product or commodity, pursuant to section 706-646; and
- (b) The cost of replanting the agricultural product or commodity.

(2) For purposes of this section, “agricultural product or commodity” includes:

- (a) Floricultural, horticultural, viticultural, aquacultural, forestry products or commodities; and
- (b) Shrubbery, nuts, coffee, seeds, and other farm or plantation products or commodities,

whether for personal or commercial use.”

SECTION 2. Section 145-22, Hawaii Revised Statutes, is amended to read as follows:

“§145-22 Agricultural commodities; ownership and movement certification. (a) Every person, upon sale of any agricultural commodity or upon transportation of lots of any agricultural commodity of more than two hundred pounds or with a value of at least \$100 that is marketed for commercial purposes, shall complete a certificate describing the commodity, the amount and value of the commodity, and ~~[indicating:]~~ shall include:

- (1) The ~~[seller, owner, buyer, or consignee;]~~ seller's name, residence address, telephone number, and license plate number of any vehicle used by the seller to deliver the commodity to the place of purchase;
- (2) The name of the farm owner and address of origin; [and]
- (3) The name of the buyer or consignee, and destination[-]; and
- (4) The signature of the seller and, upon sale, the signature of the buyer or consignee.

(b) Prior to completing the certificate, the buyer or consignee shall also require the seller to verify the seller's identity by having the seller present a valid photo identification card or license issued to the seller by a federal or state government agency. If the commodity being offered for sale has a value of \$300 or more, the seller shall also provide the buyer with a photocopy of the identification card or license of the seller.

(c) No prospective buyer or consignee shall purchase an agricultural commodity from a seller if the seller does not provide a copy of the ownership and movement certification and verification as required by subsections (a) and (b). Every prospective buyer or consignee shall report an attempted sale that does not meet the requirements of subsections (a) and (b) to the police.

(d) Two copies of the certificate shall accompany the shipment, and [a] one copy each shall be retained by [the person completing the certificate.] the seller and the buyer or consignee. One of the copies of the certificate shall be presented upon request to a state or county law enforcement officer or other officer, employee, or any other person [as described in section 145-25.] authorized and designated by the board of agriculture to investigate and enforce this chapter and all rules adopted by the department pursuant thereto.

~~[(b)]~~ (e) This section shall not apply to the retail sale of an agricultural commodity to the final consumer.”

SECTION 3. Section 145-23, Hawaii Revised Statutes, is amended to read as follows:

“§145-23 Lack of proof of ownership as a violation. The failure of any person who sells, transports, or possesses after sale or transport, agricultural commodities to maintain a certificate of ownership or other written proof of ownership of the agricultural commodity, as described in section 145-22, is a violation of this part[-] and also prima facie evidence of an offense under section 708-831(1)(e).”

SECTION 4. Section 145-25, Hawaii Revised Statutes, is amended to read as follows:

“§145-25 Enforcement; ~~[citation and summons.]~~ criminal penalties. Violations of this part or any rule adopted pursuant thereto ~~[may be enforced by citation and summons issued by:]~~ shall be criminal offenses as follows:

- (1) ~~[Any state or county law enforcement officer; or]~~ A violation in which the value of the agricultural commodity exceeds \$100 shall be a class C felony; and
- (2) ~~[Any officer or employee of the department of agriculture, or any other person, authorized and designated by the board of agriculture to investigate and enforce this chapter and all rules adopted by the department pursuant thereto.]~~ A violation in which the value of the agricultural commodity is \$100 or less shall be a misdemeanor.”

SECTION 5. Section 145-27, Hawaii Revised Statutes, is amended to read as follows:

~~“[§145-27] Authorization to seize and hold commodities; disposition. (a) [In addition to the issuance of a citation and summons, upon]~~ Upon reasonable belief that ~~[the]~~ a person is in unlawful possession of agricultural commodities a law enforcement officer or other officer or employee ~~[as described in section 145-25]~~ shall be authorized to hold the agricultural commodity for not longer than forty-eight hours to investigate and ascertain the ownership of the agricultural commodity. If the lawful owner is determined and located, the agricultural, aquacultural, or horticultural commodity shall be released to the lawful owner.

(b) If for any reason the agricultural commodity is not released to the lawful owner after being in the custody of the law enforcement officer or other officer or employee ~~[as described in section 145-25]~~ for forty-eight hours, or less in the case of highly perishable commodities, the commodity may be sold at fair market value to any retailer, wholesaler, or packer of the commodity. All of the proceeds derived from the sale shall be held by the law enforcement officer or other officer or employee ~~[as described in section 145-25]~~ for not longer than six months, during which time the lawful owner of the commodity may submit satisfactory proof of ownership and obtain possession of the proceeds. The owner may be held responsible for any costs and expenses that may be incurred by the law enforcement officer or other officer or employee ~~[as described in section 145-25]~~. Any proceeds of sale not recovered within six months for lack of a claim or for insufficient proof shall be treated as unclaimed property of the State.

(c) Any commodity that remains unsold after being offered for sale pursuant to this section may be donated to a nonprofit charitable organization or destroyed at the discretion of the law enforcement officer or other officer or employee ~~[as described in section 145-25]~~.

(d) For the purposes of this section, “officer or employee” means any officer or employee of the department of agriculture or any other person authorized and designated by the board of agriculture to investigate and enforce this chapter and all rules adopted by the department pursuant thereto.”

SECTION 6. Section 708-831, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

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

- (a) Of property from the person of another;
- (b) Of property or services the value of which exceeds \$300;
- (c) Of an aquacultural product or part thereof from premises that [is] are fenced or enclosed in a manner designed to exclude intruders or there is prominently displayed on the premises a sign or signs sufficient to give notice and reading as follows: “Private Property”~~[-or-]~~, “No Trespassing”, or a substantially similar message;

- (d) Of agricultural equipment, supplies, or products, or part thereof, the value of which exceeds \$100 but does not exceed \$20,000, or of agricultural products that exceed twenty-five pounds, from premises that are fenced, enclosed, or secured in a manner designed to exclude intruders or there is prominently displayed on the premises a sign or signs sufficient to give notice and reading as follows: “Private Property”[-], “No Trespassing”, or a substantially similar message; or if at the point of entry of the premise, a crop is visible. The sign or signs, containing letters not less than two inches in height, shall be placed along the boundary line of the land in a manner and in such position as to be clearly noticeable from outside the boundary line. Possession of agricultural products without ownership and movement certificates, when a certificate is required pursuant to chapter 145, is prima facie evidence that the products are or have been stolen[-]; or
- (e) Of agricultural commodities that are generally known to be marketed for commercial purposes. Possession of agricultural commodities without ownership and movement certificates, when a certificate is required pursuant to section 145-22, is prima facie evidence that the products are or have been stolen; provided that “agriculture commodities” has the same meaning as in section 145-21.”

SECTION 7. Section 145-26, Hawaii Revised Statutes, is repealed.

SECTION 8. Section 145-28, Hawaii Revised Statutes, is repealed.

SECTION 9. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 11. This Act shall take effect upon its approval.

(Approved June 15, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.