

A Bill for an Act Relating to Criminal Trespass.

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

SECTION 1. The legislature finds that it is necessary to establish a new criminal trespass offense to protect against people remaining on improved state land when it is closed or otherwise restricted, or on or under state highways.

The legislature further finds that the offense of criminal trespass in the second degree should be amended to include government agricultural lands that are not fenced, enclosed, or secured in a manner designed to exclude intruders when there is appropriate signage giving notice that the property is government property and trespassing is prohibited.

This Act is not intended to abridge the constitutional rights of persons who are homeless. These include their rights under the Eighth Amendment of the United States Constitution and their corresponding rights under article I, section 12, of the Constitution of the State of Hawaii to be free from cruel and unusual punishment.

SECTION 2. Chapter 708, Hawaii Revised Statutes, is amended by adding to part II a new section to be appropriately designated and to read as follows:

“§708- Criminal trespass onto state lands. (1) Except for lands owned by the office of Hawaiian affairs, and except for improved state lands that are designated safe havens by state departments or agencies, or that are under executive order by the governor to be used as a safe haven and have a department of health component and adequate space, not to include state hospitals, a person commits the offense of criminal trespass onto state lands if:

- (a) The person enters or remains unlawfully in or upon any improved state land when:
 - (i) The land is closed to public use and its closure hours are posted on a sign or signs on the improved state land, and after a request to leave is made by any law enforcement officer the person remains in or upon the land; or
 - (ii) The land is not open to the public and there are signs that are sufficient to give reasonable notice that read: “Government Property - No Trespassing”; provided that these signs shall contain letters no less than two inches in height and shall be placed at reasonable intervals no less than three signs to a mile along the boundary line of the land and at all roads and trails entering the land in a manner and position as to be clearly noticeable from outside the boundary; or
- (b) The person enters or remains unlawfully in or upon any state land on or under any highway, and the state land has a sign or signs displayed upon the land that are sufficient to give reasonable notice that read: “Government Property - No Trespassing”; provided that the signs shall contain letters no less than two inches in height and shall be placed at reasonable intervals no less than three signs to a mile along the boundary line of the land and at all roads and trails entering the land in a manner and position as to be clearly noticeable from outside the boundary.
- (2) Criminal trespass onto state lands is a petty misdemeanor.
- (3) For the purposes of this section, unless the context requires otherwise:

“Highway” has the same meaning as in section 286-2.

“Improved state land” means any state land, including but not limited to harbors under the care and control of the department of transportation under chapter 266, and small boat harbors under the care and control of the department of land and natural resources under chapter 200, upon which there is improvement, including 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 is not “improved state land” if it only has minor improvements, including utility poles, signage, and irrigation facilities or systems; or minor alterations undertaken for the preservation or prudent management of the unimproved or unused land, including fences, trails, or pathways. Land is not “improved state land” solely due to the performance of state maintenance activities on the land, including forest plantings and the removal of weeds, brush, rocks, boulders, or trees; or removal or securing of rocks or boulders undertaken to reduce risk to downslope properties.

“State lands” means all land owned by the State through any of its departments or agencies.

(4) No conviction under this section shall be used to establish a felony conviction under section 708-803.”

SECTION 3. 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),]~~ this subsection, 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;
- (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”~~[-]~~ or “Government Property - No Trespassing”. The sign or signs, containing letters ~~[not]~~ no less than two inches in height, shall be placed at reasonable intervals no less than three signs to a mile 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;
- (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~~ no less than two inches in height and shall be placed at reasonable intervals no less than three signs to a mile 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; or

- (e) The person enters or remains unlawfully in or upon the premises of any public housing project or state low-income housing project, as defined in section 356D-1, 356D-51, or 356D-91, after a reasonable warning or request to leave by housing authorities or a police officer, based upon an alleged violation of law or administrative rule; provided that a warning or request to leave shall not be necessary between 10:00 p.m. and 5:00 a.m. at any public housing project or state low-income housing project that is closed to the public during those hours and has signs, containing letters ~~not~~ no less than two inches in height, placed at reasonable intervals no less than three signs to a mile along the boundary of the project property[;] and at all entrances to the property, in a manner and position to be clearly noticeable from outside the boundary of the project property and to give sufficient notice that the public housing project or state low-income housing project is closed to the public during those hours."

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

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

SECTION 6. This Act does not affect native Hawaiian traditional and customary rights as set forth in the state constitution.

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 8. This Act shall take effect upon its approval.
(Approved July 10, 2017.)

Note

1. Edited pursuant to HRS §23G-16.5.