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## States' Fence Statutes:

*Hawaii*



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Agricultural Research Service, U.S. Department of Agriculture

A National Agricultural Law Center Research Publication

**States' Fence Statutes: Hawaii**

**Haw. Rev. Stat. §§ 142-61 to 142-73, § 663-10.99.**

*Current through Act 1 of the 2021 Regular Session, pending text revision by the revisor of statutes.*

**§ 142-61. Lawful fence; penalty.**

(a) Every fence made of stone, posts and rails, posts and boards, posts and wire, or other suitable materials shall be a lawful fence, provided that it is not less than four feet in height, substantially built, strong and close, existing in good state of repair, and capable of turning either all stock or all stock excepting swine, attempting to pass through the fence.

(b) Woven wire, or what is otherwise known also as hog-wire, used as a type of wire by itself or with a combination of barbed wire or plain wire, when supported on posts and properly fastened thereto and meeting the minimum height and stock turning requirements prescribed in subsection (a), shall be a lawful fence.

(c) The sea, rivers, ponds, and natural perpendicular bluffs, whenever impassable, shall be lawful fences.

(d) Whenever fences are built on any boundary, or within the exterior boundaries of any privately owned land or lot, or within the exterior boundaries of any leased public land or lot, to keep animals confined to certain areas or to keep farms protected against the trespass of animals, except on the boundary of any government road, it shall be lawful to have fence wire electrically charged, provided such wire is fastened to insulators supported on posts, and provided also that the charge supplied shall be through an approved electric fence controller which shall be labeled or listed as conforming to the standards of either the National Institute of Standards and Technology, the Underwriters Laboratories, Inc., or any other similar institutions of recognized standing, and provided that an electric fence controller intended for use in the State shall bear a recognized commercial trade name and the name of the selling agency of same.

(e) Whenever fences are built on any boundary, including on the boundary of any government road, within the exterior boundaries of any privately owned land or lot, or within the exterior boundaries of any leased public land or lot, to keep animals confined to certain areas or to keep farms protected against the trespass of animals, it shall be lawful to attach electrically charged attachments to the interior side of the fence; provided that in the case of wire fences, it shall be lawful to attach electrically charged attachments only to the interior side of posts supporting the wire; and provided further that no person shall be subject to injury by the electrically charged attachments while the person is on or touches the exterior side of the fence or fence posts.

(f) Any person who constructs or maintains an electrically charged fence or fence with electrically charged attachments not conforming to the requirements of this section shall be fined not more than \$500, or imprisoned not more than one year, or both.

(g) Any person who constructs or maintains an electrically charged fence or fence with electrically charged attachments along the boundary of any government road or within the exterior boundaries of any leased public land or lot shall defend, indemnify, and hold harmless, the State, county, or other public entity from all claims, suits, or judgments arising from the use of an electrically charged fence or fence with electrically charged attachments.

**§ 142-62. Breaking, etc., of fence; penalty.**

If any person maliciously and designedly opens a gateway, or breaks a fence, so as to allow any animal ingress or egress, so that it may commit a trespass, or maliciously and designedly drives or leads any animal into another locality where it may commit a trespass, the person shall, for every offense, be fined not more than \$100, or imprisoned not more than one year.

**§ 142-63. Trespass on fenced cultivated land.**

If any cattle, horse, mule, ass, swine, sheep, or goat, trespasses on any properly fenced cultivated ground, the owner thereof shall pay upon proof, the full amount of the damage or loss to the landowners, or to any person in possession of the land, whoever suffers the damage or loss.

**§ 142-64. On unfenced cultivated land.**

If any of the animals mentioned in section 142-63 trespasses on any unfenced cultivated ground, the owner thereof shall pay upon proof, the full amount of the damage or loss to the landowner or to any person in possession of the land, whoever suffers the damage or loss.

**§ 142-65. On uncultivated land.**

If any of the animals mentioned in section 142-63 trespasses on any properly fenced uncultivated land, the owner of the animals shall pay upon proof, the full amount of the damage or loss to the landowner or to any person in possession of the land, whoever suffers the damage or loss.

**§ 142-66. On public roads, lands.**

If any animal mentioned in section 142-63 trespasses or strays on any of the government roads bounded on both sides by legal fence, or upon any government land which is not used for animal husbandry situated in the counties of Hawaii, Maui and Kauai and the city and county of Honolulu, any police officer or such person as may be thereunto authorized by ordinance of the councils of said counties and city and county, may take up the animal and impound the same as said councils shall provide. The owner of the animals so taken up or impounded shall pay to the police officer or such person as may be authorized fees as provided in section 142-70 hereof. In addition, if any damage is done by the animals to a government road or land or improvements thereon, the owner thereof shall further pay such amount as shall be fixed by the directors of finance of said counties or city and county. In case the charges and pound fees are not paid, the animals impounded shall be sold at public auction as provided by any ordinance relating thereto.

**§ 142-68. Fine for continued trespassing by animals.**

In case cattle, horses, mules, asses, sheep, swine, or goats trespass on any land, the owner of the animals, if known, shall be notified by the owner or occupier of the land trespassed upon,

and if the owner of the animals does not remove them within twenty-four hours, if the animals are trespassing on a homesite, garden, or truck farm, or within forty-eight hours, if the animals are trespassing on any other type of land, the owner of the animals shall be subject to penalties as provided in section 142-12.

**§ 142-69. Stallions.**

Every person on whose land any stallion of twelve months old or upwards is found trespassing, may, without any notice, cause the stallion to be impounded, and the owner shall pay to the person upon whose land the trespass is committed \$10 for every trespass, to be collected by the pound keeper as provided by any ordinance relating thereto.

**§ 142-70. Expenses, driving, etc.**

In all cases when animals are taken up for trespass, the actual expenses reasonably incurred, which shall include, but not be limited to allowances for employees' wages, equipment cost, transportation cost, feeding cost, cost of advertising notice, and other costs related to the catching, driving and conveying of animals, to be established by ordinance by the councils of the counties of Hawaii, Maui and Kauai and the city and county of Honolulu, in addition to forfeits and damages specified in the preceding sections of this part may be assessed against the owner of the animals.

**§ 142-71. Procedure to recover animals; owner notified before impounding.**

Where any animals are taken up for trespass, the owner, if known, shall be immediately notified, if reasonably practicable, of the fact, and of the amount of damage and trespass fees claimed, and if the owner refuses or fails to pay the legal charges, or in case the owner is unknown, then the animals shall be impounded forthwith.

**§ 142-72. Procedure, if owner believes impounding illegal.**

If the owner of any animal taken up for trespass has reason to believe that the taking up or impounding of the animal was illegal, or if the owner regards the claim for damages or expenses as excessive, the owner may have the owner's animal returned to the owner upon the owner's delivering to the landowner or to the pound keeper, if the animal has been impounded, a certificate from any district judge of the circuit, stating that the owner has deposited with the judge the amount claimed by the landowner, together with the pound fees, if any, or a good and sufficient bond for the same and the costs of an action before the judge.

**§ 142-73. Jurisdiction; appeal.**

The judge shall upon receiving the amount claimed, including pound fees, if any, or a good and sufficient bond for the amount, and the costs of the action, issue the required certificate, and at the same time summon the parties to appear before the judge with their witnesses; and after a fair hearing the judge shall decide between them. No appeal shall be allowed from the judge's decision unless taken and perfected within five days after the decision has been rendered. In case of appeal the judge shall send up the costs deposited, and the amount claimed or the bond given in lieu of the amount, to the appellate court together with the certificate of appeal. If it appears on trial that the impounding was illegal, the landowner shall be compelled to pay the pound fees.

**§ 663-10.99. 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.