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## A BILL FOR AN ACT

RELATING TO TRESPASS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that the execution of  
2 criminal trespass laws for persons who have entered or remained  
3 unlawfully on another's commercial property has become  
4 unnecessarily complex. Police officers enforcing the law  
5 against a person who has previously been issued a reasonable  
6 warning or request to leave and who subsequently violates that  
7 warning or request have sometimes required the owner or lessee  
8 of the commercial premises to be present and in possession of  
9 the original copy of the prior written warning or request to  
10 leave, before allowing a complaint to be made.

11           The purpose of this Act is to streamline the criteria for  
12 showing that a prior written warning or request to leave was  
13 made, for purposes of making a complaint for criminal trespass  
14 in the second degree on commercial premises.

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



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

3           (a) The person knowingly enters or remains unlawfully in  
4           or upon premises that are enclosed in a manner  
5           designed to exclude intruders or are fenced;

6           (b) The person enters or remains unlawfully in or upon  
7           commercial premises after a reasonable warning or  
8           request to leave by the owner or lessee of the  
9           commercial premises, the owner's or lessee's  
10          authorized agent, or a police officer; provided that  
11          this paragraph shall not apply to any conduct or  
12          activity subject to regulation by the National Labor  
13          Relations Act.

14                   For the purposes of this paragraph, "reasonable  
15          warning or request" means a warning or request  
16          communicated in writing at any time within a one-year  
17          period inclusive of the date the incident occurred,  
18          which may be evidenced by a copy of the previously  
19          issued written warning or request, whether or not the  
20          copy is posted at the premises or retained by the



1           county police department, and which may contain but is  
2           not limited to the following information:

3           (i) A warning statement advising the person that the  
4           person's presence is no longer desired on the  
5           property for a period of one year from the date  
6           of the notice, that a violation of the warning  
7           will subject the person to arrest and prosecution  
8           for trespassing pursuant to this subsection, and  
9           that criminal trespass in the second degree is a  
10          petty misdemeanor;

11          (ii) The legal name, any aliases, and a photograph, if  
12          practicable, or a physical description, including  
13          but not limited to sex, racial extraction, age,  
14          height, weight, hair color, eye color, or any  
15          other distinguishing characteristics of the  
16          person warned;

17          (iii) The name of the person giving the warning along  
18          with the date and time the warning was given; and

19          (iv) The signature of the person giving the warning,  
20          the signature of a witness or police officer who



1                   was present when the warning was given and, if  
2                   possible, the signature of the violator;

3           (c) The person enters or remains unlawfully on  
4           agricultural lands without the permission of the owner  
5           of the land, the owner's agent, or the person in  
6           lawful possession of the land, and the agricultural  
7           lands:

8           (i) Are fenced, enclosed, or secured in a manner  
9           designed to exclude intruders;

10          (ii) Have a sign or signs displayed on the unenclosed  
11          cultivated or uncultivated agricultural land  
12          sufficient to give notice and reading as follows:  
13          "Private Property" or "Government Property - No  
14          Trespassing". The sign or signs, containing  
15          letters no less than two inches in height, shall  
16          be placed at reasonable intervals no less than  
17          three signs to a mile along the boundary line of  
18          the land and at roads and trails entering the  
19          land in a manner and position as to be clearly  
20          noticeable from outside the boundary line; or



- 1 (iii) At the time of entry, are fallow or have a  
2 visible presence of livestock or a crop:  
3 (A) Under cultivation;  
4 (B) In the process of being harvested; or  
5 (C) That has been harvested;
- 6 (d) The person enters or remains unlawfully on unimproved  
7 or unused lands without the permission of the owner of  
8 the land, the owner's agent, or the person in lawful  
9 possession of the land, and the lands:  
10 (i) Are fenced, enclosed, or secured in a manner  
11 designed to exclude the general public; or  
12 (ii) Have a sign or signs displayed on the unenclosed,  
13 unimproved, or unused land sufficient to give  
14 reasonable notice and reads as follows: "Private  
15 Property - No Trespassing", "Government Property  
16 - No Trespassing", or a substantially similar  
17 message; provided that the sign or signs shall  
18 contain letters no less than two inches in height  
19 and shall be placed at reasonable intervals no  
20 less than three signs to a mile along the  
21 boundary line of the land and at roads and trails



1 entering the land in a manner and position as to  
2 be clearly noticeable from outside the boundary  
3 line.

4 For the purposes of this paragraph, "unimproved  
5 or unused lands" means any land upon which there is no  
6 improvement; construction of any structure, building,  
7 or facility; or alteration of the land by grading,  
8 dredging, or mining that would cause a permanent  
9 change in the land or that would change the basic  
10 natural condition of the land. Land remains  
11 "unimproved or unused land" under this paragraph  
12 notwithstanding minor improvements, including the  
13 installation or maintenance of utility poles, signage,  
14 and irrigation facilities or systems; minor  
15 alterations undertaken for the preservation or prudent  
16 management of the unimproved or unused land, including  
17 the installation or maintenance of fences, trails, or  
18 pathways; maintenance activities, including forest  
19 plantings and the removal of weeds, brush, rocks,  
20 boulders, or trees; and the removal or securing of



1 rocks or boulders undertaken to reduce risk to  
2 downslope properties; or

3 (e) The person enters or remains unlawfully in or upon any  
4 area of a housing project that is closed to the public  
5 pursuant to section 356D-6.7 and meets the signage  
6 requirements of section 356D-6.7, or the person enters  
7 or remains unlawfully in or upon any property that is  
8 subject to section 356D-6.7 and meets the signage  
9 requirements of section 356D-6.7 after a reasonable  
10 warning or request to leave by the housing authority  
11 or law enforcement officer, as defined in section 710-  
12 1000, based upon an alleged violation of law or  
13 administrative rule, notwithstanding any invitation or  
14 authorization provided to the person by a tenant of  
15 that housing project or a member of that tenant's  
16 household.

17 As used in this paragraph:

18 "Housing authority" means a property manager,  
19 resident manager, tenant monitors, security guards, or  
20 others officially designated by the Hawaii public  
21 housing authority, for the housing project.



1 "Housing project" means a public housing project,  
2 or elder or elderly housing as defined in section  
3 356D-1, or state low-income housing project as defined  
4 in section 356D-51.

5 "Reasonable warning or request" means a warning  
6 or request communicated in writing at any time within  
7 a one-year period inclusive of the date the incident  
8 occurred, which may contain but is not limited to the  
9 following information:

10 (i) A warning statement advising the person that  
11 for a period of one year from the date of  
12 the notice, the person's presence is no  
13 longer desired in or on the areas of the  
14 subject housing project that are closed to  
15 the public, that a violation of the warning  
16 will subject the person to arrest and  
17 prosecution for trespassing pursuant to this  
18 subsection, and that criminal trespass in  
19 the second degree is a petty misdemeanor;

20 (ii) The legal name, any aliases, and a  
21 photograph, if practicable, or a physical





1 description, including but not limited to  
2 sex, racial extraction, age, height, weight,  
3 hair color, eye color, or any other  
4 distinguishing characteristics of the person  
5 warned;

6 (iii) The name of the person giving the warning  
7 along with the date and time the warning was  
8 given;

9 (iv) The signature of the person giving the  
10 warning and, if possible, the signature of  
11 the violator; and

12 (v) The name and signature of a witness or law  
13 enforcement officer, as defined in section  
14 710-1000, who was present when the warning  
15 was given."

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

19 SECTION 4. New statutory material is underscored.



# H.B. NO. 1246

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

2

INTRODUCED BY:                     *Scan*                    

JAN 23 2019



# H.B. NO. 1246

**Report Title:**

Penal Code; Criminal Trespass; Commercial Premises

**Description:**

Specifies that for purposes of making a complaint for criminal trespass in the second degree on commercial premises, evidence of a prior "reasonable warning or request" to leave the premises may be evidenced by a copy of the previously issued written warning or request, whether or not the copy is posted at the premises or retained by the county police department.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

