

ACT 245

S.B. NO. 413

A Bill for an Act Relating to Trespass.

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

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

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

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 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, and 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 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 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 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 any area of a housing project that is closed to the public pursuant to section 356D-6.7 and meets the signage requirements of section 356D-6.7, or the person enters or remains unlawfully in or upon any property that is subject to section 356D-6.7 and meets the signage requirements of section 356D-6.7 after a reasonable warning or request to leave by the housing authority or law enforcement officer, as defined in section 710-1000, based upon an alleged violation of law or administrative rule, notwithstanding any invitation or authorization provided to the person by a tenant of that housing project or a member of that tenant’s household.

As used in this paragraph:

“Housing authority” means a property manager, resident manager, tenant monitors, security guards, or others officially designated by the Hawaii public housing authority, for the housing project.

“Housing project” means a public housing project, or elder or elderly housing as defined in section 356D-1, or state low-income housing project as defined in section 356D-51.

“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 for a period of one year from the date of the notice, the person’s presence is no longer desired in or on the areas of the subject housing project that are closed to the public, that a violation of the warning will subject the person to arrest and prosecution for trespassing pursuant to 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;
- (iv) The signature of the person giving the warning and, if possible, the signature of the violator; and
- (v) The name and signature of a witness or law enforcement officer, as defined in section 710-1000, who was present when the warning was given.”

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

SECTION 4. New statutory material is underscored.

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

(Approved July 2, 2019.)