

JAN 18 2019

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.



S.B. NO. 413

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

2

INTRODUCED BY: Karl Rhoads



S.B. NO. 413

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.

