

JAN 25 2017

A BILL FOR AN ACT

RELATING TO THE HAWAII PUBLIC HOUSING AUTHORITY.

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

1 SECTION 1. The purpose of this Act is to clarify the
2 offense of trespassing on public housing property.

3 SECTION 2. Chapter 356D, Hawaii Revised Statutes, is
4 amended by adding to part I a new section to be appropriately
5 designated and to read as follows:

6 "§356D- Closed to the public. (a) Any area within a
7 housing project that is not a public street, road, highway,
8 sidewalk, or county or state bus stop, shall be closed to
9 members of the public where signs are displayed that read:
10 "Closed to the Public - No Trespassing", or a substantially
11 similar message is displayed; provided that the signs shall
12 contain letters not less than two inches in height and the signs
13 are placed at reasonable intervals along the boundary line of
14 the areas that are closed to the public in a manner and position
15 to be clearly noticeable from outside the boundary line.

16 (b) For the purposes of this section:

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

- 1 "Member of the public" does not include:
- 2 (1) A tenant, as defined in section 356D-1 or section
3 356D-51, who leases a unit in the subject housing
4 project;
- 5 (2) A household member, as defined in section 356D-1, who
6 occupies a unit in the subject housing project as a
7 household member;
- 8 (3) A live-in aide who resides with one or more elderly
9 persons, or near-elderly persons, or persons with
10 disabilities, who is determined to be essential to the
11 care and well-being of the persons, is not obligated
12 for the support of the person, and would not be living
13 in the unit in the subject housing project except to
14 provide the necessary support services;
- 15 (4) A guest of a tenant of the subject housing project;
- 16 (5) A director, officer, employee, agent, representative,
17 or contractor of the authority who is acting within
18 the director, officer, employee, agent,
19 representative, or contractor's respective scope of
20 employment or work, or is discharging an official duty
21 for the authority;
- 22 (6) An employee, agent, or contractor of the United States
23 Department of Housing and Urban Development who is

- 1 acting within the scope of the employee, agent, or
- 2 contractor's respective employment or work;
- 3 (7) A person carrying out governmental duties including
- 4 but not limited to law enforcement and emergency
- 5 medical services;
- 6 (8) A person participating in a program authorized by the
- 7 authority; and
- 8 (9) A person engaging in constitutionally protected door-
- 9 to-door communications or pamphleteering between 9:00
- 10 a.m. and 8:00 p.m."

11 SECTION 3. Section 708-814, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§708-814 Criminal trespass in the second degree.** (1) A
14 person commits the offense of criminal trespass in the second
15 degree if:

16 (a) The person knowingly enters or remains unlawfully in
17 or upon premises that are enclosed in a manner
18 designed to exclude intruders or are fenced;

19 (b) The person enters or remains unlawfully in or upon
20 commercial premises after a reasonable warning or
21 request to leave by the owner or lessee of the
22 commercial premises, the owner's or lessee's
23 authorized agent, or a police officer; provided that
24 this paragraph shall not apply to any conduct or

1 activity subject to regulation by the National Labor
2 Relations Act.

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

9 (i) A warning statement advising the person that the
10 person's presence is no longer desired on the
11 property for a period of one year from the date
12 of the notice, that a violation of the warning
13 will subject the person to arrest and prosecution
14 for trespassing pursuant to section 708-
15 814(1)(b), and that criminal trespass in the
16 second degree is a petty misdemeanor;

17 (ii) The legal name, any aliases, and a photograph, if
18 practicable, or a physical description, including
19 but not limited to sex, racial extraction, age,
20 height, weight, hair color, eye color, or any
21 other distinguishing characteristics of the
22 person warned;

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

- 1 (iv) The signature of the person giving the warning,
2 the signature of a witness or police officer who
3 was present when the warning was given and, if
4 possible, the signature of the violator;
- 5 (c) The person enters or remains unlawfully on
6 agricultural lands without the permission of the owner
7 of the land, the owner's agent, or the person in
8 lawful possession of the land, and the agricultural
9 lands:
- 10 (i) Are fenced, enclosed, or secured in a manner
11 designed to exclude intruders;
- 12 (ii) Have a sign or signs displayed on the unenclosed
13 cultivated or uncultivated agricultural land
14 sufficient to give notice and reading as
15 follows: "Private Property". The sign or signs,
16 containing letters not less than two inches in
17 height, shall be placed along the boundary line
18 of 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
- 21 (iii) At the time of entry, are fallow or have a
22 visible presence of livestock or a crop:
- 23 (A) Under cultivation;
- 24 (B) In the process of being harvested; or

1 (C) That has been harvested;

2 (d) The person enters or remains unlawfully on unimproved
3 or unused lands without the permission of the owner of
4 the land, the owner's agent, or the person in lawful
5 possession of the land, and the lands:

6 (i) Are fenced, enclosed, or secured in a manner
7 designed to exclude the general public; or

8 (ii) Have a sign or signs displayed on the unenclosed,
9 unimproved, or unused land sufficient to give
10 reasonable notice and reads as follows: "Private
11 Property - No Trespassing", "Government Property
12 - No Trespassing", or a substantially similar
13 message; provided that the sign or signs shall
14 contain letters not less than two inches in
15 height and shall be placed at reasonable
16 intervals along the boundary line of the land and
17 at roads and trails entering the land in a manner
18 and position as to be clearly noticeable from
19 outside the boundary line.

20 For the purposes of this paragraph, "unimproved
21 or unused lands" means any land upon which there is no
22 improvement; construction of any structure, building,
23 or facility; or alteration of the land by grading,
24 dredging, or mining that would cause a permanent

1 change in the land or that would change the basic
2 natural condition of the land. Land remains
3 "unimproved or unused land" under this paragraph
4 notwithstanding minor improvements, including the
5 installation or maintenance of utility poles, signage,
6 and irrigation facilities or systems; minor
7 alterations undertaken for the preservation or prudent
8 management of the unimproved or unused land, including
9 the installation or maintenance of fences, trails, or
10 pathways; maintenance activities, including forest
11 plantings and the removal of weeds, brush, rocks,
12 boulders, or trees; and the removal or securing of
13 rocks or boulders undertaken to reduce risk to
14 downslope properties; or

15 (e) ~~[The person enters or remains unlawfully in or upon~~
16 ~~the premises of any public housing project or state~~
17 ~~low income housing project, as defined in section~~
18 ~~356D-1, 356D-51, or 356D-91, after a reasonable~~
19 ~~warning or request to leave by housing authorities or~~
20 ~~a police officer, based upon an alleged violation of~~
21 ~~law or administrative rule; provided that a warning or~~
22 ~~request to leave shall not be necessary between 10:00~~
23 ~~p.m. and 5:00 a.m. at any public housing project or~~
24 ~~state low income housing project that is closed to the~~

1 ~~public during those hours and has signs, containing~~
2 ~~letters not less than two inches in height, placed~~
3 ~~along the boundary of the project property, at all~~
4 ~~entrances to the property, in a manner and position to~~
5 ~~be clearly noticeable from outside the boundary of the~~
6 ~~project property and to give sufficient notice that~~
7 ~~the public housing project or state low income housing~~
8 ~~project is closed to the public during those~~
9 ~~hours.] The person is a non-tenant:~~

10 (i) Who is a member of the public and who enters or
11 remains without authorization in or upon any area
12 of a housing project that is closed to the public
13 as set forth in section 356D- , and has signage
14 as required by section 356D- ; or

15 (ii) Who enters or remains unlawfully in or upon any
16 area of a housing project, that is closed to the
17 public as set forth in section 356D- , after a
18 reasonable warning or request to leave by the
19 housing authority or a law enforcement officer as
20 defined in section 710-1000, based upon an
21 alleged violation of law or administrative rule,
22 notwithstanding any authorization provided by a
23 tenant of the subject housing project to the
24 person.

1 (2) Subsection (1) shall not apply to a process server who
2 enters or remains in or upon the land or premises of another,
3 unless the land or premises are secured with a fence and locked
4 gate, for the purpose of making a good faith attempt to perform
5 their legal duties and to serve process upon any of the
6 following:

- 7 (a) An owner or occupant of the land or premises;
8 (b) An agent of the owner or occupant of the land or
9 premises;
10 (c) A lessee of the land or premises.

11 For the purposes of this subsection, "process server" means
12 any person authorized under the Hawaii rules of civil procedure,
13 district court rules of civil procedure, Hawaii family court
14 rules, or section 353C-10 to serve process.

15 (3) As used in [~~this section~~] subsection(1)(e):
16 "Authorization" means permission to enter the subject
17 housing project, which is given to a non-tenant either by a
18 tenant of the subject housing project, or housing authority.

19 [~~"Housing authorities"~~] "Housing authority" means a
20 property manager, resident [~~managers or managers~~] manager,
21 tenant monitors, security guards, or others officially
22 designated by the Hawaii public housing authority[-], for the
23 subject housing project.

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

4 "Member of the public" does not include:

5 (a) A tenant as defined in section 356D-1 or section 356D-
6 51 who leases a unit in the subject housing project;

7 (b) A household member as defined in section 356D-1 who
8 occupies a unit in the subject housing project as a
9 household member;

10 (c) A live-in aide who resides with one or more elderly
11 persons, or near-elderly persons, or persons with
12 disabilities, who is determined to be essential to the
13 care and well-being of the persons, is not obligated
14 for the support of the persons, and would not be
15 living in the unit except to provide the necessary
16 support services;

17 (d) A director, officer, employee, agent, representative,
18 or contractor of the Hawaii public housing authority
19 who is acting within the director, officer, employee,
20 agent, representative, or contractor's respective
21 scope of employment or work, or is discharging an
22 official duty for the authority;

23 (e) An employee, agent, or contractor of the United States
24 Department of Housing and Urban Development who is

1 acting within the employee, agent, or contractor's
2 respective scope of the employment or work;

3 (f) A person carrying out governmental duties including
4 but not limited to law enforcement and emergency
5 medical services;

6 (g) A person participating in a program authorized by the
7 Hawaii public housing authority; and

8 (h) A person engaging in constitutionally protected door-
9 to-door communications and pamphleteering between 9:00
10 a.m. and 8:00 p.m.

11 "Non-tenant" means a person who is not a tenant as defined
12 in section 356D-1 or section 356D-51, and not a household member
13 as defined in section 356-1 at the subject housing project.

14 ~~["Process server" means any person authorized under~~
15 ~~the Hawaii rules of civil procedure, district court rules~~
16 ~~of civil procedure, Hawaii family court rules, or section~~
17 ~~353C-10 to serve process.]~~

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

22 (a) A warning statement advising the person that the
23 person's presence is no longer desired in or on the
24 areas of the subject housing project that are closed

1 to the public for a period of one year from the date
2 of the notice, that a violation of the warning will
3 subject the person to arrest and prosecution for
4 trespassing pursuant to subsection (1)(e), and that
5 criminal trespass in the second degree is a petty
6 misdemeanor;

7 (b) The legal name, any aliases, and a photograph, if
8 practicable, or a physical description, including but
9 not limited to sex, racial extraction, age, height,
10 weight, hair color, eye color, or any other
11 distinguishing characteristics of the person warned;

12 (c) The name of the person giving the warning along with
13 the date and time the warning was given;

14 (d) The signature of the person giving the warning, and,
15 if possible, the signature of the violator; and

16 (e) The name and signature of a witness or law enforcement
17 officer as defined in section 710-1000 who was present
18 when the warning was given pursuant to subsection
19 (1)(e).

20 (4) Criminal trespass in the second degree is a petty
21 misdemeanor."

22 SECTION 4. This Act does not affect rights and duties that
23 matured, penalties that were incurred, and proceedings that were
24 begun before its effective date.

S.B. NO. 967

1 SECTION 5. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 6. This Act shall take effect upon its approval.
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INTRODUCED BY:

M. N. W.

7

BY REQUEST

Report Title:

Hawaii Public Housing Authority; Trespass

Description:

Provides that certain areas within Hawaii Public Housing Authority housing projects are closed to the public and amends criminal trespass in the second degree to permit the prosecution of an unauthorized entry or a violation of a written prohibition to enter into the subject housing projects. Clarifies requirements for signage notifying trespassers of illegal entry.

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

JUSTIFICATION SHEET

DEPARTMENT: Hawaii Public Housing Authority (Human Services)

TITLE: A BILL FOR AN ACT RELATING TO THE HAWAII PUBLIC HOUSING AUTHORITY.

PURPOSE: To expressly provide that certain areas of the Hawaii Public Housing Authority (HPHA) housing projects are closed to the public. To amend criminal trespass in the second degree to permit the prosecution of any unauthorized entry into any closed HPHA project property or any violation of a written prohibition to enter such property.

MEANS: Add a new section to part I of chapter 356D and amend section 708-814, Hawaii Revised Statutes.

JUSTIFICATION: This measure will assist the Hawaii Public Housing Authority to prosecute trespassers for unauthorized entry, or violation of a written prohibition to enter a housing project based on an unlawful act. The measure clarifies what property is closed to members of the public in a housing project. It defines what constitutes a "reasonable warning or request" to leave a housing project.

Impact on the public: There should be a positive impact on the public, including public housing tenants and their household members, by excluding unauthorized non-tenants from the housing project and provide for a safer living environment.

Impact on the department and other agencies: None.

GENERAL FUND: None.

SB. NO. 967

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: HMS 220; HMS 229.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.