
A BILL FOR AN ACT

RELATING TO PUBLIC ACCESS.

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

1 SECTION 1. The legislature finds that although public
2 access is protected by state law, development pressure is making
3 it difficult for residents to access beach and shoreline areas.
4 On Oahu, insufficient public access to the shore has prompted
5 multiple studies by state agencies to address conflicts between
6 beachfront property owners and the general public. Similarly on
7 Maui, recent coastline development plans have once again raised
8 the issue of adequate public access to the beach from Paia
9 through Baldwin beaches. Public access routes on Kauai have not
10 been claimed by either the State or county. As a result, the
11 routes are obstructed and prevent public access to the
12 shoreline. This situation prompted the enactment of Act 56, the
13 "roads in limbo" Act during the 2008 legislative session. The
14 legislature finds that further action is necessary to protect
15 public access for the enjoyment of the State's residents and
16 visitors.

1 The purpose of this Act is to further protect residents
2 from obstruction of public access and to create a private right
3 of action to enforce public access in the courts.

4 SECTION 2. Chapter 115, Hawaii Revised Statutes, is
5 amended by adding a new section to be appropriately designated
6 and to read as follows:

7 "§115- Suits by individuals. (a) Any person aggrieved
8 by a violation of section 115-9 has a private right of action
9 and may bring a civil action for injunctive relief in the
10 circuit court. The prevailing party bringing the action shall
11 also be entitled to recover that prevailing party's costs
12 together with reasonable attorneys' fees.

13 (b) No action may be commenced under this section less
14 than thirty days after written notice has been given to the
15 person or entity responsible for the alleged violation.

16 (c) Any suit brought pursuant to this section may be
17 brought in the judicial circuit where the alleged violation
18 occurred or is occurring. In any suit brought pursuant to this
19 section, where the State is not a party, the attorney general,
20 at the request of the department of land and natural resources,
21 may intervene on behalf of the State as a matter of right.

1 (d) Any relief provided by this section shall not restrict
2 any right that any person or class of persons may have under any
3 other law, including any constitutional provision, statute, or
4 common law to seek enforcement of any other relief, including
5 relief against any instrumentality of the State."

6 SECTION 3. Section 115-9, Hawaii Revised Statutes, is
7 amended as follows:

8 1. By amending subsections (a) and (b) to read:

9 "(a) A person commits the offense of obstructing access to
10 public property if the person, by action or by having installed
11 a physical, visual, or other impediment, intentionally prevents
12 a member of the public from traversing:

- 13 (1) A public right-of-way;
- 14 (2) A transit area; or
- 15 (3) A public transit corridor;

16 and thereby obstructs access to the sea, the shoreline, or any
17 inland public recreational area.

18 (b) Physical impediments that may prevent traversing
19 include but are not limited to the following:

- 20 (1) Gates;
- 21 (2) Fences;
- 22 (3) Walls;

- 1 (4) Constructed barriers;
- 2 (5) Rubbish;
- 3 (6) Security guards; [~~and~~]
- 4 (7) Guard dogs or animals[~~-~~];
- 5 (8) "No trespassing" signs or any other visual indication
- 6 with intent to limit public access; and
- 7 (9) Vegetation."

8 2. By amending subsection (e) to add two new definitions
9 to be appropriately inserted and to read:

10 "Public right-of-way" means any road, path, or passageway
11 established by dedication, condemnation, customary use, or open
12 and continuous public use.

13 "Public transit area" and "public transit corridor" shall
14 have the same meaning as those terms are used in section 115-5."

15 SECTION 4. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

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

Report Title:

Public Property; Beach and Shoreline Access

Description:

Amends definition of obstruction for access to public property.
Creates a private right of action for a person to enforce the
prohibition of obstruction. (SD2)