

JAN 26 2011

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 shall have a private right of
9 action and may bring a civil action for injunctive relief in the
10 circuit court. The prevailing party shall also be entitled to
11 recover the prevailing party's costs together with reasonable
12 attorneys' fees.

13 (b) No action shall be commenced under this section unless
14 the person or entity responsible for the alleged violation has
15 been given:

16 (1) Written notice of the alleged violation; and

17 (2) No less than thirty days to remove the obstruction.

18 (c) Any suit brought pursuant to this section shall be
19 brought in the judicial circuit where the alleged violation
20 occurred or is occurring. In any suit brought pursuant to this
21 section where the State is not a party, the attorney general, at



1 the request of the department of land and natural resources, may
2 intervene on behalf of the State as a matter of right.

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

8 SECTION 3. Section 115-9, Hawaii Revised Statutes, is
9 amended to read as follows:

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

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

- 15 (1) A public right-of-way;
- 16 (2) A transit area;
- 17 (3) A public transit corridor; or
- 18 (4) A beach transit corridor;

19 and thereby obstructs access to and along the sea, the
20 shoreline, or any inland public recreational area.

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



- 1 (1) Gates;
- 2 (2) Fences;
- 3 (3) Walls;
- 4 (4) Constructed barriers;
- 5 (5) Rubbish;
- 6 (6) Security guards;
- 7 (7) Guard dogs or animals; [~~and~~]
- 8 (8) A landowner's human-induced, enhanced, or unmaintained
- 9 vegetation that interferes or encroaches within beach
- 10 transit corridors[-]; and
- 11 (9) "No trespassing" signs or any other visual indication
- 12 of an intent to limit public access."

13 2. By amending subsection (e) to read:

14 "(e) As used in this section:

15 "Landowner" means the record owner of the property or the

16 record owner's agent, including a lessee, tenant, property

17 manager, or trustee.

18 "Person" means a natural person or a legal entity.

19 "Public recreational area" means public lands or bodies of

20 water opened to the public for recreational use.



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

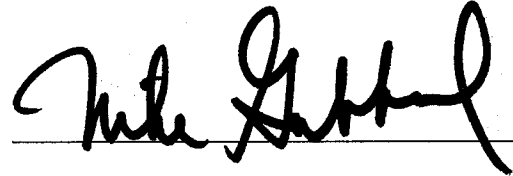
4 "Public transit corridor" shall have the same meaning as in
5 section 115-5."



6 SECTION 4. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.


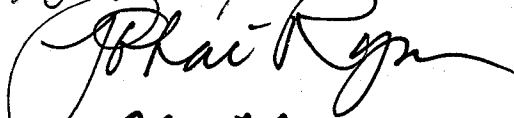
8 SECTION 5. This Act shall take effect upon its approval;
9 provided that the amendments made to section 115-9, Hawaii
10 Revised Statutes, by section 3 of this Act shall not be repealed
11 when section 115-9, Hawaii Revised Statutes, is reenacted
12 pursuant to section 7 of Act 160, Session Laws of Hawaii 2010.



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INTRODUCED BY:





Report Title:

Obstruction of Public Access; Cause of Action

Description:

Amends the offense of obstructing access to public property to include the installment of certain visual impediments. Creates a private right of action for a person to enforce the prohibition of obstruction.

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

