



EXECUTIVE CHAMBERS  
HONOLULU

DAVID Y. IGE  
GOVERNOR

**GOV. MSG. NO. 1114**

April 18, 2019

The Honorable Ronald D. Kouchi,  
President  
and Members of the Senate  
Thirtieth State Legislature  
State Capitol, Room 409  
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,  
Speaker and Members of the  
House of Representatives  
Thirtieth State Legislature  
State Capitol, Room 431  
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

Re: SB464 SD2

SB464 SD2, entitled "A BILL FOR AN ACT RELATING TO PRIVATE PROPERTY." will become law without my signature, pursuant to Section 16 of Article III of the State Constitution.

Albizia has become one of Hawai'i's most detrimental invasive plant species and is overtaking our natural ecosystems. Its rapid growth rate produces a large number of trunks and limbs that are structurally weak. Tropical Storm Iselle demonstrated that albizia can cause significant damage to infrastructure and be a threat to human life. To address the increasing concern, Hawai'i Invasive Species Council released the "Strategic Plan for the Control and Management of Albizia in Hawai'i" in 2018. Although the State has been actively addressing the situation, there is no mechanism to control albizia on private property.

The purpose of this bill is to authorize a property owner or agent to enter adjacent vacant privately owned real property with albizia to control the trees before they become hazardous. The property owner or agent must meet the following criteria before proceeding:

1. Consult with a certified arborist to confirm that the albizia trees are creating a condition that could become hazardous, but can be safely addressed.

2. Unsuccessfully make two or more reasonable attempts to contact the owner of the adjacent private property within the previous thirty days via telephone or registered mail
3. Give written notice to the adjacent property owner prior to accessing the adjacent property to prevent the property from mistakenly being determined vacant.

The bill also establishes a defense for the entering property owner or agent to criminal prosecution for criminal trespass and criminal property damage offenses.

Although SB464 SD2 addresses the control of albizia on private property, there are some concerns about its implementation and enforcement. The bill is adding a new section to the Hawai'i Penal Code in chapter 708, Hawaii Revised Statutes (HRS) that addresses offenses against property rights. However, a law that does not create criminal offenses, but rather allows entry onto private property to control albizia, should not be added to this section of HRS. The provision also creates a rather broad defense for the person entering another's land in regards to criminal property damage offenses. Perhaps the defense should have been limited to the damage of albizia trees instead of general property damage.

Placing this new law into the Hawai'i Penal Code, also places the burden on the prosecutor's office to disprove beyond a reasonable doubt that the property owner or agent entered an adjacent vacant property without fulfilling the prerequisites of this statute. This would result in the owner or agent entering the property not having to prove compliance with the albizia control provisions.

The requirement to consult with a certified arborist could create difficulties. It is unclear how the certified arborist is to legally enter the private property if necessary to make an assessment.

The bill does not require any experience or licensure to fell or remove the targeted tree and lacks disposal requirements. This could result in unintended propagation of albizia in other area of previously unaffected lands.

Finally, the language of SB464 SD2 is very vague. The bill defines "vacant" as "improved or unimproved but having no reasonable indication of use or maintenance for one year or more." The term "vacant" is extremely important to this bill, as the bill is authorizing entry onto another person's private property, provided it is vacant. The definition of "vacant" is unclear and the terms "improved" and "unimproved" are not

The Honorable Ronald D. Kouchi  
The Honorable Scott K. Saiki  
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defined in this section. Also, the phrase "indication of use or maintenance for one year or more" can be interpreted in many ways. The concerns over these terms could lead to unintended circumstances.

Despite the concerns, SB464 SD2 will provide a mechanism to remove hazardous albizia so that landowners can have an option to protect themselves and their infrastructure from damage.

For the foregoing reasons, SB464 SD2 will become law as ACT 013 (19), Session Laws of Hawaii 2019, without my signature.

Sincerely,

A handwritten signature in black ink, appearing to read "David Y. Ige". The signature is fluid and cursive, with a large, sweeping flourish at the end.

DAVID Y. IGE  
Governor, State of Hawaii

Permitted to become law without the

Governor's signature APR 17 2019  
THE SENATE  
THIRTIETH LEGISLATURE, 2019  
STATE OF HAWAII

**ACT 013**  
**S.B. NO.** 464  
S.D. 2

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# A BILL FOR AN ACT

RELATING TO PRIVATE PROPERTY.

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

1           SECTION 1. The legislature finds that albizia trees are an  
2   invasive species that are prone to breaking and falling during  
3   high winds and tropical storms. Fallen albizia trees caused  
4   power outages and other structural damage on the island of  
5   Hawaii during tropical storm Iselle in 2014. Albizia trees fell  
6   over highways, roads, and driveways in such large numbers during  
7   that storm that many people were left trapped in their homes and  
8   rescue personnel were prevented from reaching them or, in some  
9   cases, returning to their base of operations.

10           The legislature further finds that albizia trees located on  
11   private properties often create hazardous conditions for  
12   adjacent properties and that the development of these hazardous  
13   conditions should be prevented wherever possible. Albizia trees  
14   have been successfully controlled on many properties, but some  
15   property owners have been unresponsive to inquiries from owners  
16   of adjacent properties.



1           The legislature therefore finds that property owners should  
2 have the authority to enter adjacent properties to control  
3 albizia trees to prevent or address hazardous conditions,  
4 subject to certain conditions.

5           SECTION 2. Chapter 708, Hawaii Revised Statutes, is  
6 amended by adding a new section to be appropriately designated  
7 and to read as follows:

8           "§708-     Control of albizia trees on private property.

9           (a) An owner of real property or the owner's agent shall be  
10 authorized to enter vacant real property that is privately owned  
11 and directly adjacent to the entering owner's property to  
12 control one or more albizia trees located on the adjacent  
13 property; provided that that the entering owner:

14           (1) Has consulted with a tree risk assessment  
15 qualification certified arborist to confirm that the  
16 albizia trees on the adjacent property:

17           (A) Create a condition that could become hazardous to  
18 the entering owner's property or persons  
19 thereupon if left untreated; and

20           (B) May be felled and removed or otherwise treated  
21 according to current established methods that



1                   minimize risk to human health and safety, and  
2                   without damaging any structure, utility pole, or  
3                   utility line;

4           (2) Has unsuccessfully made two or more reasonable  
5           attempts within the previous thirty days to contact  
6           the owner of record of the adjacent property via  
7           telephone or registered mail; and

8           (3) Has given written notice to the adjacent property  
9           owner prior to accessing the adjacent property, to  
10           prevent the property from mistakenly being determined  
11           vacant where the land is not in production because it  
12           is, for example, resting pasture land at the intended  
13           time of entry.

14           (b) It shall be a defense to citation or prosecution under  
15           sections 708-814, 708-815, 708-820, 708-821, 708-822, 708-823,  
16           and 708-823.5 that the entering property owner or agent entered  
17           an adjacent property for the purposes of and in compliance with  
18           this section.

19           (c) As used in this section:

20           "Albizia tree" means any tree of the species *Falcataria*  
21           *moluccana* or *Albizia chinensis*.



1       "Vacant" means improved or unimproved but having no  
2 reasonable indication of use or maintenance for one year or  
3 more."

4       SECTION 3. Section 708-816, Hawaii Revised Statutes, is  
5 amended to read as follows:

6       "**§708-816 Defense to trespass.** It is a defense to  
7 prosecution for trespass as a violation of sections 708-814 and  
8 708-815 that the defendant entered upon and passed along or over  
9 established and well-defined roadways, pathways, or trails  
10 leading to public beaches over government lands, whether or not  
11 under lease to private persons[-], or for the purposes of and in  
12 compliance with section 708- ."

13       SECTION 4. This Act does not affect rights and duties that  
14 matured, penalties that were incurred, and proceedings that were  
15 begun before its effective date.

16       SECTION 5. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

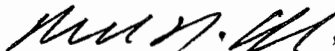
18       SECTION 6. This Act shall take effect on July 1, 2019.

APPROVED this                      day of                      , 2019

**THE SENATE OF THE STATE OF HAWAI'I**

Date: March 5, 2019  
Honolulu, Hawai'i 96813

We hereby certify that the foregoing Bill this day passed Third Reading in the Senate of the Thirtieth Legislature of the State of Hawai'i, Regular Session of 2019.

  
President of the Senate


  
Clerk of the Senate

**THE HOUSE OF REPRESENTATIVES  
OF THE STATE OF HAWAI'I**

Date: March 29, 2019  
Honolulu, Hawai'i 96813

We hereby certify that the foregoing Bill this day passed Third Reading in the House of Representatives of the Thirtieth Legislature of the State of Hawai'i, Regular Session of 2019.

  
Speaker, House of Representatives

  
Clerk, House of Representatives