

ACT 13

S.B. NO. 464

A Bill for an Act Relating to Private Property.

Be It Enacted by the Legislature of the State of Hawaii:

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

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

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

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

“§708- Control of albizia trees on private property. (a) An owner of real property or the owner’s agent shall be authorized to enter vacant real property that is privately owned and directly adjacent to the entering owner’s property to control one or more albizia trees located on the adjacent property; provided that that¹ the entering owner:

- (1) Has consulted with a tree risk assessment qualification certified arborist to confirm that the albizia trees on the adjacent property:
 - (A) Create a condition that could become hazardous to the entering owner’s property or persons thereupon if left untreated; and
 - (B) May be felled and removed or otherwise treated according to current established methods that minimize risk to human health and safety, and without damaging any structure, utility pole, or utility line;
- (2) Has unsuccessfully made two or more reasonable attempts within the previous thirty days to contact the owner of record of the adjacent property via telephone or registered mail; and
- (3) Has given written notice to the adjacent property owner prior to accessing the adjacent property, to prevent the property from mistakenly being determined vacant where the land is not in production because it is, for example, resting pasture land at the intended time of entry.

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

(c) As used in this section:

“Albizia tree” means any tree of the species *Falcataria moluccana* or *Albizia chinensis*.

“Vacant” means improved or unimproved but having no reasonable indication of use or maintenance for one year or more.”

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

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

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

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

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

(Became law on April 17, 2019, without the governor's signature, pursuant to Art. III, §16, State Constitution.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5