

ACT 209

S.B. NO. 1468

A Bill for an Act Relating to Right of Entry for Professional Surveyors.

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

SECTION 1. The legislature finds that professional land surveyors require reasonable access over and across certain real properties at reasonable times in the regular course of their work to conduct a survey of common property boundaries that are used to determine the legal interests of parties in real property. A professional land surveyor requires access to:

- (1) Retrace record boundary lines;
- (2) Recover or reestablish boundary monuments or survey controls; and
- (3) Locate rights-of-way or improvements with positional discrepancies.

Without a right of entry, a professional land surveyor conducting a land survey is often subject to trespass laws, prohibiting the land surveyor from conducting a land survey required to ensure the public's interest in maintaining a sound and uniform real property system.

The purpose of this Act is to establish a right of entry for professional land surveyors and any assistants under the direct supervision of professional land surveyors to conduct surveys that protects the real property interests of property owners and the public interest in maintaining the integrity of a sound uniform real property system.

SECTION 2. Chapter 464, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§464- Professional land surveyor right of entry to private property; notification; identification.** (a) A professional land surveyor licensed pursuant to this chapter, and any assistant under the direct supervision of the professional land surveyor, may enter the private property of the landowner of the real

property to be surveyed and any adjoining lands, but not any building, structure, residence, or vehicle, at reasonable times to perform land surveying at the request of the landowner of, or person with an interest in, the real property to be surveyed after providing a written notice not less than ten days before the proposed date of entry.

(b) The written notice shall include:

- (1) The date and time the entry is scheduled to occur;
- (2) A description of the work to be performed;
- (3) The approximate duration of the entry;
- (4) A statement that the landowner of the real property to be surveyed and the landowners of adjoining lands may refuse entry by making a timely written objection;
- (5) A statement of the date, time, and method by which the landowner of the real property to be surveyed and the landowners of adjoining lands may object; and
- (6) A statement of the date, time, and method by which the landowner of, or person with an interest in, the real property to be surveyed and the landowner or occupier of adjoining lands may notify of a disruption or interference with operations on the properties involved.

(c) The written notice shall be sent to the last known address of the landowner of, or person with an interest in, the real property to be surveyed and the landowner or occupier of adjoining lands to be accessed. Notice sent by certified mail shall be deemed sufficient notice for purposes of this section.

(d) An objection shall be expressly communicated to the professional land surveyor in writing no later than seventy-two hours before the date the survey work is to be performed. If the landowner of the real property to be surveyed or a landowner of adjoining lands makes a timely objection, the professional land surveyor, and any assistant under the direct supervision of the professional land surveyor, shall not be authorized to enter the private property of the objecting landowner pursuant to this section. If the landowner of the real property to be surveyed or a landowner of adjoining lands does not make a timely objection, the professional land surveyor, and any assistant under the direct supervision of the professional land surveyor, shall be authorized to enter the private property of the landowner pursuant to this section.

(e) When the landowner of, or person with an interest in, the real property to be surveyed or the landowner or occupier of adjoining lands gives notice to the professional land surveyor that the surveying may disrupt or interfere with operations on the properties involved, the professional land surveyor shall meet with the landowner, person with interest, or occupier to negotiate a mutually agreeable date and time to perform the land surveying.

(f) The professional land surveyor or professional land surveyor's assistant shall carry:

- (1) A government-issued photo identification;
- (2) A copy of the written notice submitted pursuant to this section; and
- (3) The land surveyor's:
  - (A) Certificate of licensure with the license number issued pursuant to this chapter, or a facsimile thereof; or
  - (B) Seal or stamp, or facsimile thereof, authorized pursuant to section 464-11."

SECTION 3. Section 708-813, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

“(2) Subsection (1) shall not apply to [a]:

- (a) A process server who enters or remains in or upon the land or

premises of another, unless the land or premises are secured with a fence and locked gate, for the purpose of making a good faith attempt to perform their legal duties and to serve process upon any of the following:

- [(a)] (i) An owner or occupant of the land or premises;
- [(b)] (ii) An agent of the owner or occupant of the land or premises; or
- [(c)] (iii) A lessee of the land or premises[.]; or

(b) A professional land surveyor, or assistant under the direct supervision of the professional land surveyor, who enters or remains in or upon the land or premises of another for the purpose of performing land surveying at the request of the landowner of, or person with an interest in, the real property to be surveyed.”

SECTION 4. Section 708-814, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

“(2) Subsection (1) shall not apply to [a]:

(a) A process server who enters or remains in or upon the land or premises of another, unless the land or premises are secured with a fence and locked gate, for the purpose of making a good faith attempt to perform the process server’s legal duties and to serve process upon any of the following:

- [(a)] (i) An owner or occupant of the land or premises;
- [(b)] (ii) An agent of the owner or occupant of the land or premises; or
- [(c)] (iii) A lessee of the land or premises.

For the purposes of this ~~subsection,~~ paragraph, “process server” means any person authorized under the Hawaii rules of civil procedure, district court rules of civil procedure, Hawaii family court rules, or section 353C-10 to serve process[.]; or

(b) A professional land surveyor, or assistant under the direct supervision of the professional land surveyor, who enters or remains in or upon the land or premises of another for the purpose of performing land surveying at the request of the landowner of, or person with an interest in, the real property to be surveyed.”

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 7. This Act shall take effect upon its approval.

(Approved July 3, 2023.)

**Note**

1. Edited pursuant to HRS §23G-16.5.