

JAN 26 2009

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
6 developing between beachfront property owners and the general
7 public. Similarly on Maui, recent coastline development plans
8 have once again raised the issue of adequate public access to
9 the beach from Paia through Baldwin beaches. Public access
10 routes on Kauai have not been claimed by either the State or
11 county. The routes are obstructed and prevent public access to
12 the shoreline. This situation prompted the enactment of Act 56,
13 the "roads in limbo" Act during the 2008 legislative session.
14 The legislature finds that action is necessary to protect public
15 access for the enjoyment of the State's residents and 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. Any person bringing such an action shall also be
11 entitled to recover the person's costs together with reasonable
12 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, may intervene on behalf of the
21 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 read:

9 "(e) As used in this section:

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

11 "Public recreational area" means public lands or bodies of
12 water opened to the public for recreational use.


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

16 "Public transit area" and "public transit corridor" shall
17 have the same meaning as those term are used in section 115-5."

18 SECTION 4. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

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

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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.

