

## ACT 131

H.B. NO. 636

A Bill for an Act Relating to Real Property.

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

SECTION 1. In recent years, sophisticated surveying technology has created significant increases in measurement accuracy. As a result, licensed land surveyors have found that many improvements were built according to older construction and surveying standards of accuracy. These older surveys were accurate in accordance to earlier standards and were reasonably relied on by the owners of the real property to build homes, fences, walls, and other improvements, resulting in minor encroachments onto neighboring properties. Shifting of improvements also occurs with minor land subsidence and growth of vegetation. Even where the discrepancies are minute, the encroachment has been troublesome. Unwritten wall agreements between real property owners also add to the problem. Thus, real property owners have had to spend significant amounts of money to move fences or walls by less than an inch, or retain the services of an attorney to obtain an encroachment agreement.

The purpose of this Act is to establish de minimus tolerances for classes of real property to avoid the need for encroachment agreements or for costly rectification when these minor structure position discrepancies are found.

SECTION 2. Chapter 669, Hawaii Revised Statutes, is amended by adding a new part II to be appropriately designated and to read as follows:

**“PART II. STRUCTURE POSITION DISCREPANCIES**

**§669-A De minimus structure position discrepancies, defined.** For the purposes of this part, “de minimus structure position discrepancy” means:

- (1) For commercial property and multi-unit residential property, 0.25 feet;
- (2) For all other residential property, 0.5 feet;
- (3) For agricultural and rural property, 0.75 feet; and
- (4) For conservation property, 1.5 feet;

between the location of an improvement legally constructed along what was reasonably believed to be the boundary line and the actual location of the boundary line based on a modern survey.

**§669-B Consequences.**

- (1) A de minimus structure position discrepancy shall not be considered an encroachment or a basis for a zoning violation;
- (2) No de minimus structure position discrepancy authorized under this part shall be considered as a basis for any claim of adverse possession of land. If the wall or other improvement that is affected by the discrepancy is removed or substantially damaged or destroyed, the replacement improvement shall be constructed to comply with the most recent survey available at the time of construction of the improvement;
- (3) Responsibility for maintenance and repair of an improvement within a de minimus structure position discrepancy shall be borne by the property owner who constructed the improvement, or the property owner’s successor in interest; and
- (4) Liability for any claims for injuries or damages to persons or property arising out of, or in connection with an improvement within a de minimus structure position discrepancy shall be borne by the property owner who constructed the improvement, or the property owner’s successor in interest.

**§669-C Restrictions as to owner of property.** This part shall not apply to any de minimus structure position discrepancy on public lands, as defined in section 171-2, or to such encroaching improvements incident to shoreline boundaries. If real property subject to this section is owned by a county, any improvement within a de minimus structure position discrepancy shall be removed at the expense of the property owner who constructed the improvement, or the property owner’s successor in interest, upon notice, in accordance with the respective county procedures or ordinances.

SECTION 3. Chapter 669, Hawaii Revised Statutes, is amended by designating sections 669-1 to 669-8 as part I and inserting a title before section 669-1 to read as follows:

**“PART I. GENERAL PROVISIONS”**

SECTION 4. New statutory material is underscored.

SECTION 5. This Act shall apply to all structure position discrepancies in effect on its effective date without regard to when the facts or actions giving rise to the discrepancy occurred.

**SECTION 6.** In codifying the new part added to chapter 669, Hawaii Revised Statutes, by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in the designation of the new sections in this Act.

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

(Approved June 16, 1997.)