

ACT 169

S.B. NO. 3044

A Bill for an Act Relating to Public Property.

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

SECTION 1. The legislature finds that the article XI, section 1, of the State Constitution states, "All public natural resources are held in trust by the State for the benefit of the people." In the 1977 case of *State v. Zimring*, 58 Haw. 106, the state supreme court implied such an extension when it noted that the State's duty to protect and maintain public trust property was "implemented by devoting the land to actual public uses, e.g. recreation." The legislature finds that the public's right to the use and enjoyment of public trust areas is meaningful only if there is an access right. The restriction of access is an infringement upon the fundamental right of free movement to and use of coastal and inland recreational areas.

The purpose of this Act is to establish penalties for obstructing the right of the public access to the sea, shorelines, and inland recreational areas by way of or through any of the public rights-of-way, transit areas, or public transit corridors.

SECTION 2. Chapter 115, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§115- Obstructing access to public property; penalty. (1) A person commits the offense of obstructing access to public property if the person, by action or by having installed a physical impediment, intentionally prevents a member of the public from traversing:

- (a) A public right-of-way;
- (b) A transit area; or
- (c) A public transit corridor;

and thereby obstructs access to the sea, the shoreline, or any inland public recreational area.

(2) Physical impediments that may prevent traversing include but are not limited to the following:

- (a) Gates;
- (b) Fences;
- (c) Walls;
- (d) Constructed barriers;
- (e) Rubbish;
- (f) Security guards; and
- (g) Guard dogs or animals.

(3) Obstructing access to public property is a misdemeanor.

(4) Minimum fines for violation under this section shall be as follows:

- (a) \$1,000 for a second conviction; and
- (b) \$2,000 for any conviction after a second conviction.

(5) As used in this section:

“Person” means a natural person or a legal entity.

“Public recreational area” means public lands or bodies of water opened to the public for recreational use.”

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. New statutory material is underscored.¹

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

(Approved July 6, 2004.)

Note

1. Edited pursuant to HRS §23G-16.5.