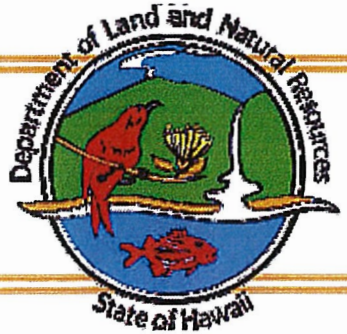


State Historic Preservation Division



HOUSE OF REPRESENTATIVES
H.B. NO. 712
TWENTY-THIRD LEGISLATURE, 2005
STATE OF HAWAII

A BILL FOR AN ACT

RELATING TO VIOLATIONS OF CHAPTER 6E.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Chapter 6E, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"PART . CRIMES

§6E-A Appropriation, excavation, injury, destruction, or alteration of historic property or aviation artifact. (a) A person, natural or corporate, commits the offense of appropriation, excavation, injury, destruction, or alteration of historic property or aviation artifact if the person, natural or corporate:

(1) Takes, appropriates, excavates, injures, destroys, or alters any historic property or aviation artifact located upon the private lands of any owner thereof without the owner's written permission being first obtained; or

(2) Takes, appropriates, excavates, injures, destroys, or alters any historic property or aviation artifact located upon lands owned or controlled by the State or any of its political subdivisions, except as permitted by the department.

(b) Appropriation, excavation, injury, destruction, or alteration of historic property or aviation artifact is a misdemeanor for which a fine not to exceed \$25,000 may be imposed in addition to any other penalty provided by chapter 706 for a misdemeanor.

(c) Each day of a continued violation of this section shall constitute a distinct and separate offense.

§6E-B Appropriation, excavation, injury, destruction, or alteration of a burial site.

(a) A person, natural or corporate, commits the offense of appropriation, excavation, injury, destruction, or alteration of a burial site if the person, natural or corporate:

(1) Takes, appropriates, excavates, injures, destroys, or alters any burial site or the contents thereof, located on private lands or lands owned or controlled by the State or any of its political subdivisions, except as permitted by the department; or

(2) Takes, appropriates, excavates, injures, destroys, or alters any burial site or the contents thereof during the course of land development or land alteration activities to which section 6E-42 applies, without obtaining the required approval.

(b) Appropriation, excavation, injury, destruction, or alteration of a burial site is a misdemeanor for which a fine not to exceed \$25,000 may be imposed in addition to any other penalty provided by chapter 706 for a misdemeanor.

(c) Each day of a continued violation of this section shall constitute a distinct and separate offense.

§6E-C Failure to stop work upon discovery of a burial site. (a) A person, natural or corporate, commits the offense of failure to stop work upon discovery of a burial site if the person discovers a burial site and fails to stop work in the immediate area and report the discovery as required by section 6E-43.6.

(b) It is not a defense to a prosecution of a violation of this section that the discovery of the burial site was inadvertent.

(c) Failure to stop work upon discovery of a burial site is a misdemeanor for which a fine not to exceed \$25,000 may be imposed in addition to any other penalty provided by chapter 706 for a misdemeanor.

(d) Each day of a continued violation of this section shall constitute a distinct and separate offense.

§6E-D Criminal penalties not in lieu of civil or administrative penalties. The criminal penalties imposed by this part are in addition to, and not in lieu of, any civil or administrative penalties provided by law.

§6E-E Part not applicable to family burial plots. Nothing in this part shall apply to land altering activities related to family burial plots under section 441-5.5."

SECTION 2. Section 6E-11, Hawaii Revised Statutes, is amended to read as follows:

"§6E-11 ~~[Penalties.]~~ Civil violations. (a) It shall be ~~[unlawful]~~ a civil violation for any person, natural or corporate, to take, appropriate, excavate, injure, destroy, or alter any historic property or aviation artifact located upon the private lands of any owner thereof without the owner's written permission being first obtained. It shall be ~~[unlawful]~~ a civil violation for any person, natural or corporate, to take, appropriate, excavate, injure, destroy, or alter any historic property or aviation artifact located upon lands owned or

controlled by the State or any of its political subdivisions, except as permitted by the department.

(b) It shall be ~~[unlawful]~~ a civil violation for any person, natural or corporate, to knowingly take, appropriate, excavate, injure, destroy, or alter any burial site or the contents thereof, located on private lands or lands owned or controlled by the State or any of its political subdivisions, except as permitted by the department. ~~[Violators of this subsection are also subject to prosecution pursuant to section 711-1107, the penalties for which shall be imposed in addition to, and not in lieu of, any penalties imposed under this section.]~~

(c) It shall be ~~[unlawful]~~ a civil violation for any person to take, appropriate, excavate, injure, destroy, or alter any historic property or burial site during the course of land development or land alteration activities to which section 6E-42 applies, without obtaining the required approval. ~~[The penalties imposed pursuant to subsections (e) and (f) shall be in addition to any other penalties that may be imposed pursuant to law.]~~

(d) It shall be ~~[unlawful]~~ a civil violation for any person who inadvertently discovers a burial site to fail to stop work in the immediate area and report the discovery, as required by section 6E-43.6.

(e) Any person who violates this section shall be fined not more than \$10,000 for each separate offense. If the violator directly or indirectly has caused the loss of, or damage to, historic property or burial site, the violator shall be fined an additional amount determined by the court to be equivalent to the value of the lost or damaged historic property or burial site. Each day of continued violation of this provision shall constitute a distinct and separate offense for which the offender may be punished. Equipment used by a violator for the taking, appropriation, excavation, injury, destruction, or alteration of historic property or a burial site, or for the transportation of the violator to or from the historic property or a burial site, shall be subject to seizure and disposition by the State without compensation to its owner or owners.

(f) Any person, natural or corporate, who knowingly violates this section with respect to burial sites shall also be prohibited from participating in the construction of any state or county funded project for ten years.

(g) Nothing in this section shall apply to land altering activities relating to family burial plots under section 441-5.5.

(h) The penalties imposed by this section shall be in addition to the criminal penalties provided by this chapter and any other penalties that may be imposed pursuant to law."

SECTION 3. In codifying the new part added to chapter 6E, Hawaii Revised Statutes, by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in the new section designations in this Act.

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

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

(signed into law June 16, 2005)



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