
A BILL FOR AN ACT

RELATING TO KANEOHE BAY.

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

1 SECTION 1. The legislature finds that Kaneohe Bay,
2 including Ahu o Laka, also known as the sandbar, has a rich
3 cultural history that blends into the understanding of present-
4 day significance and is a sacred wahi pana to the Native
5 Hawaiian lineal and generational inhabitants of Koolaupoko,
6 which includes Waimanalo, Kailua, Kaneohe, Heeia, Kahaluu,
7 Waihee, Kaalaea, Waiahole, Waikane, Hakipuu, and Kualoa. Over
8 the years, over-commercialization of Kaneohe Bay, including Ahu
9 o Laka, has been unnaturally encouraged via social media and
10 through unpermitted tour operators who advertise and operate
11 without regard for laws, rules, regulations, and cultural
12 awareness. Kaneohe Bay and attractions in the bay such as Ahu o
13 Laka are advertised as "must see" tourist stops without the
14 mention of cultural awareness or significance, and non-permitted
15 commercial operators set up advertisements and online payment
16 schemes and bring guests, circumventing principles and
17 intentions of the original 1992 Kaneohe Bay master plan. This



1 problem is exacerbated because state entities responsible for
2 protecting resources do not work on weekends or holidays, which
3 encourages noncompliance with laws, rules, and regulations.
4 Furthermore, unauthorized advertising on social media and online
5 has led to increased private and rental vehicles parking
6 illegally at Heeia boat harbor and along both sides of
7 Kamehameha highway, causing unsafe traffic conditions.

8 The legislature further finds that the Kaneohe Bay master
9 plan was developed pursuant to Act 208, Session Laws of Hawaii
10 1990, which established a framework for the sustainable
11 management of the bay's natural resources while accommodating a
12 variety of uses. A compromise of competing interests resulted
13 in a cap on the number of commercial enterprises and volume of
14 permitted commercial activity. The vision continues to be the
15 preservation and protection of the bay's natural resources for
16 the continued enjoyment of all.

17 The legislature also finds that limits on commercial
18 activity have been exceeded by other activities not previously
19 envisioned and by new technologies that support their
20 proliferation. Examples include the pre-positioning of rental
21 kayaks at Heeia state park and Heeia Kea pier; internet



1 advertisements for boats, kayaks, and other commercial
2 recreational uses; and the ability of customers to pay online
3 and through mobile money transfer platforms such as Venmo.

4 Accordingly, the purpose of this Act is to update the law
5 regarding restricted activities in Kaneohe Bay.

6 SECTION 2. Section 200-24, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "[~~§~~]**200-24**[~~§~~] **Rules.** The department shall adopt rules
9 pursuant to chapter 91 to implement the policy and purpose of
10 this part, and to classify vessels into appropriate categories
11 and classes.

12 The department shall adopt rules pursuant to chapter 91
13 with respect to the following:

- 14 (1) The registration and numbering of vessels;
- 15 (2) The operation, use, and equipment of vessels on or in
16 the waters of the State;
- 17 (3) The conduct of persons involved in boating accidents
18 and in the reporting of accidents and other casualties
19 and losses to the department; [~~and~~]
- 20 (4) The designation of areas of the waters of the State
21 and time periods during which thrill craft may be



1 operated, and waters on or above which, and time
2 periods during which, persons may engage in
3 parasailing, commercial high speed boating, and water
4 sledding; provided that in designating the areas, the
5 department shall use the official recommendation of
6 the National Marine Fisheries Service with regard to
7 the protection of protected marine life and habitats
8 in adopting rules to implement this section, except as
9 otherwise provided by law[+]; and

10 (5) Procedures for a law enforcement officer to issue
11 subpoenas or take custody of property pursuant to
12 section 200-39(g)."

13 SECTION 3. Section 200-39, Hawaii Revised Statutes, is
14 amended to read as follows:

15 **"§200-39 Kaneohe Bay commercial ocean use activities;**
16 **permits; restrictions.** [~~(a) For the purposes of this section,~~
17 ~~"ocean use activities" means commercial operation of thrill~~
18 ~~craft, high speed boating, parasailing, water sledding, sailing~~
19 ~~and snorkeling tours, glassbottom boat tours, or any other~~
20 ~~similar commercial ocean recreation activity for hire.~~



1 ~~(b)]~~ (a) Any other provision of this chapter to the
2 contrary notwithstanding, no person shall operate thrill craft,
3 parasailing, water sledding, or commercial high speed boating
4 unless the person meets the requirements of section 200-37 and
5 all rules adopted by the department that regulate or restrict
6 these activities.

7 (b) No person shall conduct any commercial ocean use
8 activity within Kaneohe Bay waters without a permit issued by
9 the department.

10 (c) No person shall advertise or otherwise offer any
11 commercial ocean use activity or equipment for such activity
12 within Kaneohe Bay waters for which the person does not have a
13 permit from the department. Advertisement in print; by word of
14 mouth; or online in any form, including through social media, of
15 unpermitted commercial ocean use activities or commercial ocean
16 recreational equipment shall be prima facie evidence that:

17 (1) The owner of the advertised commercial ocean use
18 activity or commercial ocean recreational equipment
19 disseminated or directed the dissemination of the
20 advertisement in that form and manner; and



1 (2) The commercial ocean use activity or commercial ocean
2 recreational equipment is being operated at the
3 location advertised.

4 The burden of proof shall be on a person charged with a
5 violation of this section to establish that the equipment is not
6 being used for unpermitted commercial ocean use activity or that
7 the person's conduct is pursuant to a permit, lease, or license
8 issued by the department.

9 [~~(e)~~] (d) Permits issued by the department for [~~the~~]
10 commercial [~~operation of~~] ocean use activities in Kaneohe Bay
11 shall be limited to the number and locations, by permit type and
12 vessel and passenger capacity, provided in the Kaneohe Bay
13 master plan developed pursuant to Act 208, Session Laws of
14 Hawaii 1990, until applicable rules consistent with the master
15 plan are adopted by the department; provided that the passenger
16 capacity for snorkeling tours and glassbottom boat tours shall
17 be set through rules adopted pursuant to chapter 91. No thrill
18 craft permit may be transferred after June 21, 1998; provided
19 that transfers of permits may be made at any time between family
20 members.



1 ~~[(d)]~~ (e) On Sundays and federal holidays, all commercial
2 ocean use activities shall be prohibited.

3 ~~[(e)]~~ (f) All rules adopted by the department with regard
4 to Kaneohe Bay shall be drafted in consultation with the Kaneohe
5 Bay regional council. For those provisions of the Kaneohe Bay
6 master plan previously adopted by the legislature, the rules
7 adopted by the department shall be in accordance with those
8 provisions. Notwithstanding subsection ~~[(e)]~~ (d) to the
9 contrary, if the department determines for safety or
10 environmental protection reasons that a permitted use should be
11 relocated, the department may relocate the permitted use and the
12 department shall have discretion to permit vessel substitution
13 with a similar length vessel; provided that the increase is
14 ~~[not]~~ no greater than ten per cent of the current vessel length.

15 For those provisions of the Kaneohe Bay master plan
16 developed pursuant to Act 208, Session Laws of Hawaii 1990, not
17 previously adopted by the legislature, the master plan shall be
18 used as the recommended guideline in the adoption and
19 implementation of rules with regard to the regulation of all
20 activities in Kaneohe Bay.



1 (g) Citations for violations of this section or any rules
2 of the department adopted pursuant to this section may be issued
3 by any law enforcement officer. In enforcing this section, any
4 law enforcement officer shall have the power to issue subpoenas
5 and take legal custody of any personal property that is the
6 subject of or related to any violation of this section or rules
7 established by the department pursuant to this section.

8 (h) Property confiscated pursuant to this section may be
9 released only upon approval by the board or a court of competent
10 jurisdiction. Storage of confiscated property shall be at the
11 sole risk and expense to the owner. The department may charge
12 reasonable storage fees to the owner for storage of any property
13 confiscated pursuant to this section.

14 (i) Any property confiscated pursuant to this section that
15 remains unclaimed for more than ten working days after it has
16 been released pursuant to subsection (h) may be sold at public
17 auction. If the department does not, or is unable to, sell the
18 property at public auction, the department, after giving public
19 notice of intended disposition, if that notice was not
20 previously included in a public auction notice, may sell the
21 property by negotiation, retain and use the property, donate the



1 property to any other government agency, or dispose of the
2 property as junk.

3 (j) Any penalties established in rule pursuant to this
4 section shall be separate and in addition to any other fees,
5 charges, and fines imposed by the department.

6 (k) As used in this section:

7 "Commercial ocean recreational equipment" means thrill
8 craft; watercraft for high-speed boating, parasailing, water
9 sledding, sailing, snorkeling, diving tours, fishing tours, or
10 glassbottom boat tours; kayaks; canoes; any manner of
11 surfboards, sailboards, paddleboards, or related watercraft; or
12 watercraft for any other similar commercial ocean activity.

13 "Commercial ocean use activity" means and includes:

14 (1) Any commercial operation of commercial ocean
15 recreational equipment, or any other similar
16 commercial ocean activity;

17 (2) Providing any commercial ocean recreational equipment
18 for rent or hire; or

19 (3) Delivering for hire or pre-positioning within one
20 thousand feet of any shoreline of Kaneohe Bay for
21 hire, any commercial ocean recreational equipment.



1 "Commercial ocean use activity" shall not include commercial
2 fishing, commercial ocean activity authorized by a permit issued
3 by the department, or activity authorized by an existing lease
4 or license issued by the department."

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

7 SECTION 5. This Act shall take effect on July 1, 2023.



Report Title:

Kaneohe Bay; Restrictions; Commercial Ocean Use Activities;
Commercial Ocean Recreational Equipment; Permits

Description:

Prohibits commercial ocean use activity in Kaneohe Bay waters without a permit. Prohibits any person from advertising any commercial ocean use activity or equipment for such activity in Kaneohe Bay waters for which the person does not have a permit. Establishes enforcement mechanisms for the prohibitions. (CD1)

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