
A BILL FOR AN ACT

RELATING TO COMMERCIAL OCEAN ACTIVITY.

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

1 SECTION 1. The department of land and natural resources
2 (department) division of boating and ocean recreation is
3 responsible for ocean recreation management in state ocean
4 waters, among other responsibilities. Public safety and marine
5 natural resources can be affected by a variety of environmental
6 factors and emerging ocean recreation technologies, some of
7 which may change rapidly and frequently. This Act is part of a
8 comprehensive ocean recreation management package put forth by
9 the department to ensure effective natural resource protection
10 by providing better management and enforcement tools.

11 Over the years, overcommercialization of state ocean waters
12 has been unnaturally encouraged via social media and through
13 unpermitted ocean tour operators who advertise and operate
14 without regard for laws, rules, regulations, and cultural
15 awareness. These unpermitted commercial operators set up
16 advertisements and online payment schemes, circumventing
17 commercial ocean activity laws and restrictions. Subsequently,



1 when attempting to enforce laws against illegal commercial
2 activity, department staff have oftentimes encountered
3 difficulty in proving that commercial activity or compensation
4 of the alleged illegal commercial operator occurred. Many
5 illegal commercial operators and their customers claim that a
6 commercial tour is a "friends and family" outing for no
7 compensation, preventing effective enforcement.

8 Therefore, the purpose of this Act is to, for purposes of
9 regulating commercial activity under the laws regulating ocean
10 recreation:

- 11 (1) Include advertisements and offers within the
12 definition of "commercial activity"; and
- 13 (2) Provide that advertisements and offers of unpermitted
14 commercial ocean use activities or commercial ocean
15 recreational equipment are prima facie evidence that:
- 16 (A) The owner disseminated or directed dissemination
17 of the advertisements or offers; and
- 18 (B) The commercial activity is operated at the
19 location advertised or offered.

20 SECTION 2. Section 200-4, Hawaii Revised Statutes, is
21 amended by amending subsection (a) to read as follows:



- 1 "(a) The chairperson may adopt rules necessary:
- 2 (1) To regulate the manner in which all vessels may enter
- 3 the ocean waters and navigable streams of the State
- 4 and moor, anchor, or dock at small boat harbors,
- 5 launching ramps, and other boating facilities owned or
- 6 controlled by the State;
- 7 (2) To regulate the embarking and disembarking of
- 8 passengers at small boat harbors, launching ramps,
- 9 other boating facilities, and public beaches;
- 10 (3) For the safety of small boat harbors, launching ramps,
- 11 and other boating facilities, and the vessels anchored
- 12 or moored therein;
- 13 (4) For the conduct of the public using small boat
- 14 harbors, launching ramps, and other boating facilities
- 15 owned or controlled by the State;
- 16 (5) To regulate and control recreational and commercial
- 17 use of small boat harbors, launching ramps, and other
- 18 boating facilities owned or controlled by the State
- 19 and the ocean waters and navigable streams of the
- 20 State;



1 (6) To prevent the discharge or throwing into small boat
2 harbors, launching ramps, other boating facilities,
3 ocean waters, and navigable streams, of rubbish,
4 refuse, garbage, or other substances likely to affect
5 the quality of the water or that contribute to making
6 the small boat harbors, launching ramps, other boating
7 facilities, ocean waters, and streams unsightly,
8 unhealthful, or unclean, or that are liable to fill
9 up, shoal, or shallow the waters in, near, or
10 affecting small boat harbors, launching ramps, and
11 other boating facilities and the ocean waters and
12 navigable streams of the State, and likewise to
13 prevent the escape of fuel or other oils or substances
14 into the waters in, near, or affecting small boat
15 harbors, launching ramps, or other boating facilities
16 and the ocean waters and navigable streams of the
17 State from any source point, including but not limited
18 to any vessel or from pipes or storage tanks upon
19 land, including:
20 (A) Requirements for permits and fees for:



- 1 (i) The mooring, docking, or anchoring of
- 2 recreational and commercial vessels or the
- 3 launching of recreational or commercial
- 4 vessels at small boat harbors, launching
- 5 ramps, and other boating facilities; or
- 6 (ii) Other uses of these facilities;
- 7 (B) Requirements for permits and fees for use of a
- 8 vessel as a principal place of habitation while
- 9 moored at a state small boat harbor;
- 10 (C) Requirements governing:
- 11 (i) The transfer of any state commercial,
- 12 mooring, launching, or any other type of use
- 13 or other permit, directly or indirectly,
- 14 including but not limited to the imposition
- 15 or assessment of a business transfer fee
- 16 upon transfer of ownership of vessels
- 17 operating commercially from, within or in
- 18 any way related to the state small boat
- 19 harbors; and
- 20 (ii) The use of state small boat harbors,
- 21 launching ramps, or other boating facilities



1 belonging to or controlled by the State,
2 including but not limited to the
3 establishment of minimum amounts of annual
4 gross receipts required to renew a
5 commercial use permit, and conditions under
6 which a state commercial, mooring,
7 launching, or any other type of use or other
8 permit may be terminated, canceled, or
9 forfeited; and

10 (D) Any other rule necessary to implement this
11 chapter pertaining to small boat harbors,
12 launching ramps, and other boating facilities
13 belonging to or controlled by the State;

14 (7) To continue the ocean recreational and coastal areas
15 programs and govern the ocean waters and navigable
16 streams of the State, and beaches encumbered with
17 easements in favor of the public to protect and foster
18 public peace and tranquility and to promote public
19 safety, health, and welfare in or on the ocean waters
20 and navigable streams of the State, and on beaches



1 encumbered with easements in favor of the public,
2 including:
3 (A) Regulating the anchoring and mooring of vessels,
4 houseboats, and other contrivances outside of any
5 harbor or boating facility, including:
6 (i) The designation of offshore mooring areas;
7 (ii) The licensing and registration of vessels,
8 houseboats, and other contrivances; and the
9 issuance of permits for offshore anchoring
10 and mooring of vessels, houseboats, and
11 other contrivances; and
12 (iii) The living aboard on vessels, houseboats, or
13 other contrivances while they are anchored
14 or moored within ocean waters or navigable
15 streams of the State.
16 The rules shall provide for consideration of
17 environmental impacts on the State's aquatic
18 resources in the issuance of any permits for
19 offshore mooring;



- 1 (B) Safety measures, requirements, and practices in
- 2 or on the ocean waters and navigable streams of
- 3 the State;
- 4 (C) The licensing and registration of persons or
- 5 organizations engaged in commercial activities in
- 6 or on the ocean waters and navigable streams of
- 7 the State;
- 8 (D) The licensing and registration of equipment
- 9 utilized for commercial activities in or on the
- 10 ocean waters and navigable streams of the State;
- 11 (E) For beaches encumbered with easements in favor of
- 12 the public, the prohibition or denial of the
- 13 following uses and activities:
- 14 (i) Commercial activities;
- 15 (ii) The storage, parking, and display of any
- 16 personal property;
- 17 (iii) The placement of structures or obstructions;
- 18 (iv) The beaching, landing, mooring, or anchoring
- 19 of any vessels; and



1 (v) Other uses or activities that may interfere
2 with the public use and enjoyment of these
3 beaches; and

4 (F) Any other matter relating to the safety, health,
5 and welfare of the general public;

6 (8) To regulate the examination, guidance, and control of
7 harbor agents and their assistants; and

8 (9) To regulate commercial activities in state waters
9 including operations originating from private marinas;
10 provided that no new or additional permits shall be
11 required for those commercial activities regulated by
12 any other chapter.

13 For the purposes of this paragraph:

14 "Commercial activity" means to engage in any
15 action or attempt to engage in any action for
16 compensation in any form. The action or actions may
17 include providing or attempting to provide,
18 advertising, or offering or attempting to offer guide
19 services, charters, tours, and transportation to and
20 from the location or locations for which such services
21 are provided. Advertisement or offers in print; by



1 word of mouth; or online in any form, including
2 through social media, of unpermitted commercial ocean
3 use activities or commercial ocean recreational
4 equipment shall be prima facie evidence that:

5 (A) The owner of the advertised or offered commercial
6 activity disseminated or directed the
7 dissemination of the advertisement or offer in
8 that form and manner; and

9 (B) The commercial activity is being operated at the
10 location advertised or offered.

11 The burden of proof shall be on a person charged
12 with a violation of commercial activity restrictions
13 under this chapter or rules adopted by the department
14 to establish that vessels or equipment, or both, are
15 not being used for unpermitted commercial activity or
16 that the person's conduct is authorized pursuant to a
17 permit, lease, or license issued by the department.

18 "Compensation" means money, barter, trade,
19 credit, and other instruments of value, goods, and
20 other forms of payment.



1 "Social media" means any form of electronic
2 communication through which users create online
3 communities to share information, personal messages,
4 and other content, offered from platforms, including
5 but not limited to Facebook, YouTube, TikTok,
6 Instagram, Yelp, Tripadvisor, Twitter, Reddit, and
7 Foursquare."

8 SECTION 3. New statutory material is underscored.

9 SECTION 4. This Act shall take effect on July 1, 3000.



Report Title:

Commercial Ocean Activity; Advertisements and Offers

Description:

Includes advertisements and offers in the definition of "commercial activity" as used in the state boating laws. Provides that advertisements or offers for commercial activity are prima facie evidence that the owner disseminated or directed dissemination of such advertisements or offers and the commercial activity is operated at the location advertised or offered. Effective 7/1/3000. (HD1)

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