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JAN 24 2024

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 impacted 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, over-commercialization 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

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

9 Therefore, the purpose of this Act is to update the law
10 defining commercial ocean activities.

11 SECTION 2. Section 200-4, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "§200-4 Rules. (a) The chairperson may adopt rules
14 necessary:

15 (1) To regulate the manner in which all vessels may enter
16 the ocean waters and navigable streams of the State
17 and moor, anchor, or dock at small boat harbors,
18 launching ramps, and other boating facilities owned or
19 controlled by the State;

20 (2) To regulate the embarking and disembarking of
21 passengers at small boat harbors, launching ramps,
22 other boating facilities, and public beaches;

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- 1 (3) For the safety of small boat harbors, launching ramps,
2 and other boating facilities, and the vessels anchored
3 or moored therein;
- 4 (4) For the conduct of the public using small boat
5 harbors, launching ramps, and other boating facilities
6 owned or controlled by the State;
- 7 (5) To regulate and control recreational and commercial
8 use of small boat harbors, launching ramps, and other
9 boating facilities owned or controlled by the State
10 and the ocean waters and navigable streams of the
11 State;
- 12 (6) To prevent the discharge or throwing into small boat
13 harbors, launching ramps, other boating facilities,
14 ocean waters, and navigable streams, of rubbish,
15 refuse, garbage, or other substances likely to affect
16 the quality of the water or that contribute to making
17 the small boat harbors, launching ramps, other boating
18 facilities, ocean waters, and streams unsightly,
19 unhealthful, or unclean, or that are liable to fill
20 up, shoal, or shallow the waters in, near, or
21 affecting small boat harbors, launching ramps, and
22 other boating facilities and the ocean waters and

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1 navigable streams of the State, and likewise to
2 prevent the escape of fuel or other oils or substances
3 into the waters in, near, or affecting small boat
4 harbors, launching ramps, or other boating facilities
5 and the ocean waters and navigable streams of the
6 State from any source point, including but not limited
7 to any vessel or from pipes or storage tanks upon
8 land, including:

9 (A) Requirements for permits and fees for:

10 (i) The mooring, docking, or anchoring of
11 recreational and commercial vessels or the
12 launching of recreational or commercial
13 vessels at small boat harbors, launching
14 ramps, and other boating facilities; or

15 (ii) Other uses of these facilities;

16 (B) Requirements for permits and fees for use of a
17 vessel as a principal place of habitation while
18 moored at a state small boat harbor;

19 (C) Requirements governing:

20 (i) The transfer of any state commercial,
21 mooring, launching, or any other type of use
22 or other permit, directly or indirectly,

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1 including but not limited to the imposition
2 or assessment of a business transfer fee
3 upon transfer of ownership of vessels
4 operating commercially from, within or in
5 any way related to the state small boat
6 harbors; and
7 (ii) The use of state small boat harbors,
8 launching ramps, or other boating facilities
9 belonging to or controlled by the State,
10 including but not limited to the
11 establishment of minimum amounts of annual
12 gross receipts required to renew a
13 commercial use permit, and conditions under
14 which a state commercial, mooring,
15 launching, or any other type of use or other
16 permit may be terminated, canceled, or
17 forfeited; and
18 (D) Any other rule necessary to implement this
19 chapter pertaining to small boat harbors,
20 launching ramps, and other boating facilities
21 belonging to or controlled by the State;

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1 (7) To continue the ocean recreational and coastal areas
2 programs and govern the ocean waters and navigable
3 streams of the State, and beaches encumbered with
4 easements in favor of the public to protect and foster
5 public peace and tranquility and to promote public
6 safety, health, and welfare in or on the ocean waters
7 and navigable streams of the State, and on beaches
8 encumbered with easements in favor of the public,
9 including:

10 (A) Regulating the anchoring and mooring of vessels,
11 houseboats, and other contrivances outside of any
12 harbor or boating facility, including:

13 (i) The designation of offshore mooring areas;

14 (ii) The licensing and registration of vessels,
15 houseboats, and other contrivances; and the
16 issuance of permits for offshore anchoring
17 and mooring of vessels, houseboats, and
18 other contrivances; and

19 (iii) The living aboard on vessels, houseboats, or
20 other contrivances while they are anchored
21 or moored within ocean waters or navigable
22 streams of the State.

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

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- 1 of any vessels; and
- 2 (v) Other uses or activities that may interfere
- 3 with the public use and enjoyment of these
- 4 beaches; and
- 5 (F) Any other matter relating to the safety, health,
- 6 and welfare of the general public;
- 7 (8) To regulate the examination, guidance, and control of
- 8 harbor agents and their assistants; and
- 9 (9) To regulate commercial activities in state waters
- 10 including operations originating from private marinas;
- 11 provided that no new or additional permits shall be
- 12 required for those commercial activities regulated by
- 13 any other chapter.

14 For the purposes of this paragraph:

15 "Commercial activity" means to engage in any action or

16 attempt to engage in any action for compensation in any form.

17 The action or actions may include providing or attempting to

18 provide advertising or offering or attempting to offer guide

19 services, charters, tours, and transportation to and from the

20 location or locations for which such services are provided.

21 Advertisement or offers in print; by word of mouth; or online in

22 any form, including through social media, of unpermitted

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1 commercial ocean use activities or commercial ocean recreational
2 equipment shall be prima facie evidence that:

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

7 (2) The commercial activity is being operated at the
8 location advertised or offered.

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

16 "Compensation" means money, barter, trade, credit, and
17 other instruments of value, goods, and other forms of payment.

18 "Social media" means any form of electronic communication
19 through which users create online communities to share
20 information, personal messages, and other content, offered from
21 platforms including, but not limited to, Facebook, YouTube,

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1 TikTok, Instagram, Yelp, Tripadvisor, Twitter, Reddit, and
2 Foursquare.

3 (b) All rules shall be adopted in accordance with chapter
4 91 and shall have the force and effect of law."

5 SECTION 3. New statutory material is underscored.

6 SECTION 4. This Act shall take effect upon its approval.

7

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INTRODUCED BY: *John H. Hill*

9

BY REQUEST

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Report Title:

Commercial Ocean Activity; Advertisements and Offers

Description:

Includes advertisements and offers in the definition of "commercial activity" as used in chapter 200, HRS. Provides that advertisements or offers for commercial activity are prima facie evidence that the owner disseminated or directed dissemination of such advertisements or offers.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

DEPARTMENT: Land and Natural Resources

TITLE: A BILL FOR AN ACT RELATING TO COMMERCIAL OCEAN ACTIVITY.

PURPOSE: To include advertisements and offers in the definition of "commercial activity" as used in chapter 200, Hawaii Revised Statutes (HRS); and to provide that advertisements or offers for commercial activity are prima facie evidence that the owner of the advertisement or offer disseminated or directed dissemination of the advertisement or offer.

MEANS: Amend section 200-4, HRS.

JUSTIFICATION: There has been a rapid expansion of commercial ocean recreational activity within a relatively short period of time, leading to overuse of boating facilities, strain on natural resources, and user conflicts between recreational and commercial ocean users. Many illegal commercial ocean operators claim that their customers are friends and/or family who are not paying for services, which hinders the Department's efforts to enforce illegal commercial ocean activity.

This bill would expand the definition of "commercial activity" as in chapter 200, HRS, to include advertising or offering to provide unpermitted commercial ocean use activities or commercial ocean recreational equipment. This bill would provide that advertisements or offers for commercial activity are prima facie evidence that the owner of the advertisement or offer disseminated or directed dissemination of the advertisement or offer. The burden would be on the alleged illegal commercial ocean operator to prove that the operator's activities are legal in light of the

operator's advertisement for commercial ocean activities.

Impact on the public: This bill would help to reduce over-commercialization of ocean resources and allow the recreational public greater enjoyment of state ocean waters.

Impact on the department and other agencies: This bill would provide the Department with more clarity for enforcing commercial ocean activity restrictions.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: LNR 801.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.