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# A BILL FOR AN ACT

RELATING TO FRESHWATER WATERWAYS.

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

1           SECTION 1. The legislature finds that Hawaii's beaches and  
2 oceans sustain a rich and diverse ecosystem and serve as a  
3 foundation of the State's culture, recreation, and economy.  
4 Because the State is an archipelago, the health of the State's  
5 marine environment is inextricably linked to the condition of  
6 its inland waterways.

7           The legislature also finds that during Hawaii's rainy  
8 season, it is common for bays or beaches to be affected by  
9 natural runoff from freshwater waterways. Although this runoff  
10 occurs naturally, in recent years, the volume of human-made  
11 waste finding its way to streams and being washed out to the  
12 ocean via these freshwater waterways has significantly  
13 increased. Encampments established in, on, or immediately  
14 around freshwater waterways and drainage channels that lead to  
15 the ocean have added to the human-made waste in Hawaii's  
16 freshwater waterways, degrading marine habitats and diminishing  
17 public health and safety. Furthermore, it has become



1 increasingly common for first responders to rescue individuals  
2 who reside in, on, or immediately around these freshwater  
3 waterways, placing both the individuals and the first responders  
4 at serious risk.

5 Therefore, the purpose of this Act is to help protect  
6 Hawaii's natural environment and help protect human life by  
7 prohibiting residing in, on, or within fifty feet of a  
8 freshwater waterway and authorizing law enforcement agencies to  
9 enforce the prohibition.

10 SECTION 2. The Hawaii Revised Statutes is amended by  
11 adding a new chapter to title 12, subtitle 6, to be  
12 appropriately designated and to read as follows:

13 **"CHAPTER**

14 **VACATING OF FRESHWATER WATERWAYS**

15 § -1 **Definitions.** As used in this chapter:

16 "Freshwater waterway" means any stream or stream channel  
17 identified by or consistent with the stream inventory maintained  
18 by the commission on water resource management pursuant to  
19 chapter 174C and any natural watercourse with a defined bed and  
20 bank in which water flows more than ephemerally that is



1 hydrologically connected to coastal systems, including tidally  
2 influenced or brackish reaches.

3 "Law enforcement agency" means any county police  
4 department, the department of law enforcement, and the division  
5 of conservation and resources enforcement of the department of  
6 land and natural resources.

7 "Law enforcement officer" has the same meaning as in  
8 section 710-1000.

9 "Order to vacate" means an order issued by a law  
10 enforcement agency to vacate any area in, on, or within fifty  
11 feet of a freshwater waterway.

12 "Residing" means sleeping, lodging, or otherwise occupying  
13 a structure, encampment, vehicle, or place for dwelling  
14 purposes, as indicated by the use of bedding, shelter materials,  
15 or other items commonly associated with habitation, including  
16 but not limited to tents, tarps, sleeping bags, blankets,  
17 pillows, portable shelters, or similar sleeping equipment.

18 "Unattended personal property" means personal property not  
19 in the immediate possession or control of any individual and not  
20 temporarily set aside while the owner remains in the immediate  
21 vicinity.



1           §   -2   **Residence; prohibited.** Unless otherwise allowed by  
2 law, including section   -3, no individual shall reside in, on,  
3 or within fifty feet of a freshwater waterway or within fifty  
4 feet of any wall, berm, or similar structure lining a freshwater  
5 waterway.

6           §   -3   **Applicability.** This chapter shall not be construed  
7 to apply to:

8           (1) A lawful owner or renter of real property within fifty  
9 feet of a freshwater waterway; or

10          (2) Any other individual occupying real property as an  
11 owner, lessee, or authorized residential occupant  
12 within fifty feet of a freshwater waterway.

13          §   -4   **Violations; citation; timeline.** (a) A violation  
14 of this chapter shall constitute a civil violation and shall not  
15 constitute a criminal offense. Any civil citations issued  
16 pursuant to this chapter shall be issued in accordance with  
17 chapter 199D or other applicable law.

18          (b) A law enforcement officer who observes a violation of  
19 this chapter shall issue an oral order to vacate and a written  
20 notice stating the location, date, time, and nature of the  
21 violation and the steps required for compliance. The notice



1 shall direct the individual and any personal property to be  
2 relocated to a location more than fifty feet from the edge of  
3 the freshwater waterway. The notice shall state that failure to  
4 comply within twenty-four hours after the time of issuance may  
5 result in a citation. Nothing in this subsection shall limit a  
6 law enforcement officer's authority to immediately direct  
7 relocation when an imminent threat to life or public safety  
8 exists, including but not limited to flooding or hazardous  
9 contamination. Any emergency shortening of the notice period  
10 shall be documented in writing.

11 The notice shall inform the individual that essential  
12 personal property, including not limited to identification  
13 documents, medication, mobility aids, and items necessary for  
14 immediate health and safety, shall not be discarded and shall be  
15 handled pursuant to section -5.

16 (c) Before issuing a civil citation in a particular  
17 location, the law enforcement officer shall document any attempt  
18 to notify public and private agencies, organizations, and  
19 entities that assist individuals experiencing homelessness.  
20 Failure of an outreach entity to respond shall not invalidate a



1 citation. A law enforcement officer shall document any attempt  
2 to notify and coordinate with outreach entities.

3 (d) If an individual remains in the prohibited area after  
4 the expiration of the time specified in the notice, the law  
5 enforcement officer may issue a written civil citation that  
6 shall be adjudicated pursuant to chapter 199D or other  
7 applicable law and may initiate the State or county's  
8 established homeless encampment clearance protocol.

9 (e) The citation shall include:

10 (1) The name of the law enforcement officer issuing the  
11 citation;

12 (2) The date, time, and location of the alleged violation;

13 (3) A factual statement identifying the conduct  
14 constituting the alleged violation;

15 (4) The amount or range of the civil penalty;

16 (5) The time and location for the individual to appear or  
17 the method to contest the citation; and

18 (6) A statement of the procedure and deadline to request a  
19 hearing to contest the citation.

20 (f) Service of the citation shall constitute a summons to  
21 the individual to appear or respond as directed in the citation.



1 (g) Any person who receives a citation under this section  
2 may contest the citation pursuant to chapter 199D or other  
3 applicable law. A timely request for hearing shall stay the  
4 collection of any civil penalty until a final administrative  
5 decision is issued.

6 (h) If a civil penalty is imposed, the civil penalty shall  
7 be proportionate and may be waived or reduced upon a showing of  
8 indigency or proof of compliance, including corrective action to  
9 cure the violation or good-faith payment or payment arrangements  
10 toward the civil penalty.

11 (i) When conducting a homeless encampment clearance  
12 pursuant to subsection (d), a law enforcement officer shall  
13 document any attempt to notify and coordinate with local  
14 homeless outreach agencies, including the statewide office on  
15 homelessness and housing solutions and any similar county  
16 offices or departments tasked with assisting individuals  
17 experiencing homelessness. Failure of an outreach agency to  
18 respond shall not invalidate the clearance.

19 (j) A citation issued pursuant to this section shall be in  
20 addition to any other penalty or enforcement action authorized  
21 by any other applicable law or ordinance.



1           §   -5   **Unattended personal property; removal; inventory;**  
2 **storage; disposal.** (a) If unattended personal property remains  
3 in the prohibited area after the expiration of the time  
4 specified in the notice issued pursuant to section   -4, the  
5 state or county agency having jurisdiction over the area, acting  
6 through its officers, employees, or authorized agents or  
7 contractors, may remove the unattended personal property.

8           (b) At the time of removal, the state or county agency  
9 shall prepare a written inventory describing the personal  
10 property removed and the location from which it was removed,  
11 including a general description and the quantity of items  
12 removed.

13           (c) The state or county agency shall store the personal  
14 property in a secure location for a period of no less than  
15 thirty days from the date of removal.

16           (d) At the time of removal, or as soon thereafter as  
17 practicable, the state or county agency shall provide written  
18 notice describing the location of storage and the method by  
19 which the personal property may be reclaimed. Personal property  
20 shall be returned upon request of the owner without charge,  
21 except for storage fees authorized by law; provided that storage



1 fees shall not be charged to individuals who attest to  
2 indigency.

3 (e) Personal property not reclaimed within the period set  
4 forth in subsection (c) may be disposed of in accordance with  
5 law.

6 (f) Notwithstanding subsections (a) through (e), personal  
7 property that presents an immediate threat to public health or  
8 safety may be discarded without storage; provided that the basis  
9 for the determination is documented with particularity in  
10 writing.

11 (g) Personal property removed pursuant to this section  
12 shall not be relocated onto privately owned real property  
13 without the consent of the owner of the real property.

14 (h) Essential personal property, including but not limited  
15 to identification documents, medication, mobility aids, and  
16 items necessary for immediate health and safety, shall be  
17 catalogued separately and made available for immediate retrieval  
18 upon request.

19 (i) Notice of the storage location and retrieval method  
20 shall be provided in writing at the time of removal and, when



1 practicable, by posted signage at or near the site of removal  
2 for at least seven days.

3 (j) Removal of personal property under this section shall  
4 be for administrative and custodial purposes only and shall not  
5 constitute a seizure for criminal evidentiary purposes; provided  
6 that nothing in this subsection shall prohibit the lawful  
7 seizure of contraband or evidence of a crime discovered in plain  
8 view.

9 § -6 **Rules.** The department of land and natural  
10 resources shall adopt rules pursuant to chapter 91 to implement  
11 this chapter.

12 § -7 **Relationship to other laws.** Nothing in this  
13 chapter shall be construed to preempt any other law or ordinance  
14 that prohibits entry into, occupancy of, or residing within  
15 freshwater waterways or other protected areas."

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

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



**Report Title:**

Freshwater Waterways; Prohibition Against Residing; Personal Property

**Description:**

Prohibits residing in, on, or within fifty feet of a freshwater waterway. Authorizes law enforcement officers to enforce the prohibition. Specifies that violation is a civil violation, not a criminal offense. Establishes procedures for the removal, inventory, storage, and disposal of unattended personal property. Effective 7/1/3000. (HD1)

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

