

ACT 218

S.B. NO. 791

A Bill for an Act Relating to Vessels.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that vessel ownership and operation come with many responsibilities and that vessels likewise pose significant threats to natural resources and to public health and safety if abandoned, neglected, or left in disrepair. The legislature recognizes that unauthorized, abandoned, grounded, and derelict vessels on state property and in the waters of the State must be removed as soon as possible to minimize the hazards posed to the public while balancing the vessel owner’s right to due process.

Since 2002, the division of boating and ocean recreation within the department of land and natural resources has expended in excess of \$2,340,000 from the boating special fund to address unauthorized, abandoned, grounded, and derelict vessels on state property or in the waters of the State. However, under existing law, in many instances, by the time the department of land and natural resources may begin removing an unauthorized, abandoned, grounded, or derelict vessel, the condition of the vessel has deteriorated, further complicating removal efforts and increasing the potential to create threats to public health, public safety, and natural resources.

The purpose of this Act is to amend provisions regarding the designation, impoundment, and disposal of unauthorized, abandoned, grounded, and derelict vessels on state property or in the waters of the State to facilitate faster responses of these proceedings.

SECTION 2. Section 200-16, Hawaii Revised Statutes, is amended to read as follows:

“§200-16 [Mooring of unauthorized vessel in state small boat harbors and offshore mooring areas;] Unauthorized vessels; impoundment and disposal proceedings. (a) [No person shall moor a vessel in a state small boat harbor or offshore mooring area without obtaining a use permit; nor shall a person continue to

moor a vessel in any state small boat harbor or offshore mooring area if the use permit authorizing the vessel to moor has expired or otherwise been terminated.] A vessel moored without a valid use permit or moored with a use permit that has expired or been terminated [is] shall be deemed an unauthorized vessel [and is subject to] in violation of this section~~[-]~~ and shall be subject to impoundment and disposal.

(b) The department shall ~~[cause to be placed]~~ place upon, or as near to ~~[the]~~ an unauthorized vessel as possible, a notice to remove the vessel, which shall, at a minimum, indicate that the vessel is in violation of this section, the date and time the notice was posted, and that the vessel ~~[must]~~ shall be removed within seventy-two hours ~~[from]~~ of the time that the notice was posted~~[-]~~; provided that if the vessel is in imminent danger of breaking up on state submerged land, a shoreline, or a coral reef, the notice shall indicate that the owner shall commence effective salvage operations within twenty-four hours of the time that the notice was posted.

(c) An unauthorized vessel may be impounded by the department at the sole risk and expense of the owner of the vessel~~[-]~~ if the vessel is not removed after the ~~[seventy-two hour]~~ period ~~[or]~~ specified in subsection (b). Calculation of the time period shall not restart if, during that period, the vessel is [removed and removed in the harbor or mooring or anchorage area or any other state harbor or mooring or anchorage area without a use permit.] moved anywhere in the waters of the State or to any public property and remains in violation of this section. The owner of the vessel shall be solely responsible for all costs of the impoundment and the disposal of the unauthorized vessel. All owners of unauthorized vessels that are impounded by the department shall be responsible for paying impound storage fees to the department while the vessel remains impounded and until the time that the vessel is returned to the custody of a person entitled to possession. Impound storage fees shall be equal to the rate set by the department for vessels moored without a valid permit. Any proceeds [resulting from] collected by the department in relation to the impoundment and the disposal of the unauthorized vessel shall be used first to pay for the costs of impoundment and disposal [and], then to pay for any additional costs related to the impoundment and disposal, then to pay for any outstanding mooring fees due[-] to the department from the owner, and then to the general fund. If the proceeds resulting from the impoundment and the disposal are inadequate to pay for all costs and mooring fees due, the owner of the unauthorized vessel shall remain liable for ~~[the]~~ paying the department any and all outstanding costs and mooring fees~~[-]~~ due.

(d) Custody of an unauthorized vessel shall be returned to the person entitled to possession only upon payment ~~[to the department]~~ in full of all fees and costs due~~[-]~~ to the department and any and all fines levied by the department or a court~~[-]~~ of competent jurisdiction. In addition, the department, within seventy-two hours of impoundment, shall send by certified mail, return receipt requested, a notice of impoundment to the registered or documented owner or any lien holder or operator of the impounded vessel on record with the department or the United States Coast Guard. The owner, lien holder, or operator of the impounded vessel shall have ~~[ten]~~ five working days after receipt of notice of impoundment of the vessel to request ~~[in writing]~~ an administrative hearing. ~~[This]~~ A request for an administrative hearing [is] under this subsection shall:

- (1) Be made in writing to the department;
- (2) Not be deemed delivered until the time that the department receives the written request; and

- (3) Be solely for the purpose of allowing the owner, lien holder, or operator of an impounded vessel to contest the basis given by the department for the impoundment of the vessel.

The administrative hearing [must] shall be held within five working days of [the department's receipt] delivery of the written request. The department [shall] may adopt rules pursuant to chapter 91 to implement the requirement for this post-seizure administrative hearing process.

(e) Any unauthorized vessel impounded under this section[,-which] that remains unclaimed for more than [thirty] ten working days by the registered or documented owner, a lien holder, or operator of record[;] may be sold by the department at public auction. If the department does not, or is unable to, sell the vessel at public auction, [or if its appraised value is less than \$5,000 as determined by an independent appraiser with at least one year of experience in the sale and purchase of vessels;] the department, after giving public notice of intended disposition, if that notice was not previously included in a public auction notice, may sell the vessel by negotiation, retain and use the vessel, donate [it] the vessel to any other government agency, or dispose of [it] the vessel as junk."

SECTION 3. Section 200-41, Hawaii Revised Statutes, is amended to read as follows:

“§200-41 [Disposition of certain abandoned] Abandonment of vessels.

(a) No person shall abandon any vessel in the waters of the State or on any property, other than the property of the vessel owner, without the consent of the property owner.

[(a) Any] (b) A vessel [may be deemed] shall be presumed abandoned if [the]:

(1) The vessel has been moored, anchored, or otherwise left unattended in the waters of the State or on public property [contrary to law or rules having the force and effect of law, or left] for more than seventy-two hours without a valid use permit;

(2) The vessel has been left unattended on private property without authorization of the owner or occupant of the property [if:

(1) The vessel's registration certificate or marine document has expired and the registered owner no longer resides at the address listed in the vessel registration or marine document records of the department or the United States Coast Guard;] for more than seventy-two hours;

[(2) (3) The last registered owner of record disclaims ownership and the current owner's name or address cannot be determined;

[(3) The vessel identification numbers and other means of identification have been removed so as to hinder or nullify efforts to locate or identify the owner;

(4) The vessel registration records of the department of land and natural resources and the marine document records of the United States Coast Guard contain no record that the vessel has ever been registered or documented and the owner's name or address cannot be determined; or]

(4) The vessel does not have a valid registration certificate or United States Coast Guard documentation and has been moored, anchored, or otherwise left unattended in the waters of the State or on public property for more than seventy-two hours; or

(5) The requirements of section 200-52 are met.

[(b) (c) The determination of whether a vessel is abandoned on public property may be made by:

- (1) The chairperson, or the chairperson's authorized representative, with regard to public property under the jurisdiction of the department [of land and natural resources]; [or]
- (2) Any other state department or agency through its director, with regard to public property within the department or agency's respective jurisdiction; or
- (3) Any county through its mayor or the mayor's designee, or chief of police, with regard to public property within the respective county's jurisdiction; provided that the department shall provide to the respective county access to the department's vessel registration and marine document records or those of the United States Coast Guard for the purposes of this section.

Once a vessel is deemed abandoned[;] in the waters of the State or on public property, the appropriate official under this subsection may direct and cause the vessel to be taken into custody and disposed of pursuant to, and in the manner provided in, this [chapter:] part. All owners of abandoned vessels that are impounded by the department shall be responsible for paying impound fees to the department while the vessel remains impounded and until the vessel is returned to the custody of a person entitled to possession or disposed of by the department. Impound storage fees shall be equal to the rate set by the department for vessels moored without a valid permit.

[(e)] (d) All vessels abandoned on private property shall be the responsibility of the private property owner.

(e) Any person who abandons a vessel in the waters of the State or on public property shall be guilty of a petty misdemeanor and shall be fined not more than \$1,000 or imprisoned not more than thirty days, or both, for each offense. Each day of each violation shall be deemed a separate offense. All criminal fines collected pursuant to this subsection shall be deposited into the general fund in accordance with section 706-643. It shall be an affirmative defense to prosecution that a vessel was abandoned during a national emergency declared by the President or Congress of the United States, or a state of emergency declared by the governor, or as otherwise approved in writing by the chairperson, or the chairperson's designee; provided that the defense shall be valid only for the duration of the declared emergency or written approval."

SECTION 4. Section 200-42, Hawaii Revised Statutes, is amended to read as follows:

"§200-42 Notice to owner. (a) A state or county agency, upon taking custody of any vessel[;] deemed abandoned pursuant to section 200-41, shall immediately post a written notice on the vessel and send a duplicate original by registered or certified mail, with a return receipt requested, to any owner registered with the department or documented by the United States Coast Guard or any lien holder or operator of the vessel on record with the department or the United States Coast Guard at their respective last known address on record with the department or the United States Coast Guard. The notice shall contain a brief description of the vessel, the location of custody, and the intended disposition of the vessel if not repossessed within [twenty] ten working days after the mailing of the notice. [Such owner, lien holder, or operator, of the vessel shall have ten days after receipt of the mailed notice to request in writing an administrative hearing pursuant to chapter 91 from the state or county agency that took custody of the vessel. This administrative hearing is solely for the purpose of allowing the owner, lien holder, or operator of an impounded vessel to contest the basis given for the impoundment of the vessel. The hearing shall be held within five working days of the state or county agency's receipt of the written request.]

(b) The owner, lien holder, or operator of the vessel shall have five working days after receipt of notice of impoundment of the vessel to request an administrative hearing from the state or county agency that took custody of the vessel. A request for administrative hearing shall:

- (1) Be made in writing to the state or county agency that took custody of the vessel;
- (2) Not be deemed delivered until the time that the agency receives the written request; and
- (3) Be solely for the purpose of allowing the owner, lien holder, or operator of an impounded vessel to contest the basis given by the agency for the impoundment of the vessel.

The administrative hearing shall be held within five working days of delivery of the written request.”

SECTION 5. Section 200-43, Hawaii Revised Statutes, is amended to read as follows:

“§200-43 Public auction[-]; disposition of abandoned vessels. [If the vessel is not repossessed within twenty days after the mailing of the notice, the vessel shall be disposed of by public auction, through oral tenders, or by sealed bids, after public notice has been given at least once; provided that the public auction shall not be held less than five days after the notice is given. Where no bid is received, the vessel may be sold by negotiation, disposed of as junk, or donated to any governmental agency.] Any abandoned vessel impounded under this part that remains unclaimed by the registered or documented owner, lien holder, or operator of record for more than ten working days after mailing of the notice required by section 200-42 may be sold at public auction by the state or county agency that took custody of the vessel. If the agency does not, or is unable to, sell the vessel at public auction, the agency, after giving public notice of intended disposition, may sell the vessel by negotiation, retain and use the vessel, donate the vessel to any other government agency, or dispose of the vessel as junk.”

SECTION 6. Section 200-47.5, Hawaii Revised Statutes, is amended by amending subsections (b) to (g) to read as follows:

“(b) Solely for the purposes of removal and with no liability to the department, the department may immediately assume control of any vessel that is grounded on state submerged land, a shoreline, or a coral reef [ø]; in imminent danger of breaking up; and cannot be removed by the owner within twenty-four hours from the time the vessel [is] was grounded; provided that this subsection shall not apply [if]:

- (1) During a national emergency declared by the President or Congress of the United States;
- (2) During a state of emergency declared by the governor;
- (3) If the owner or owner’s representative has received notice from the department and has commenced effective salvage operations[-]; or
- (4) If otherwise approved in writing by the chairperson or the chairperson’s designee.

(c) [Vessels] Except during a national emergency declared by the President or Congress of the United States, or a state of emergency declared by the governor, or as otherwise approved in writing by the chairperson or the chairperson’s designee, vessels grounded on a sand beach, sandbar, or mudflat [and not in imminent danger of breaking up] shall be removed by the owner or operator within seventy-two hours[-, unless otherwise agreed to by the department].

(d) Solely for the purposes of removal and with no liability to the department, the department may immediately assume control of any vessel that is grounded on a sand beach, sandbar, or mudflat [and]; not in imminent danger of breaking up [that is]; and not removed by the owner in a manner that is reasonably safe, as determined by the department, within seventy-two hours of notification to the vessel owner or the owner's representative; provided that this subsection shall not apply [if]:

(1) During a national emergency declared by the President or Congress of the United States;

(2) During a state of emergency declared by the governor;

(3) If the owner or owner's representative has received notice from the department and has commenced effective salvage operations[-]; or

(4) If otherwise approved in writing by the chairperson or the chairperson's designee.

(e) Once the department assumes control [over the] of a vessel[-] pursuant to this section, the vessel shall be removed by conventional salvage methods if possible, and if not possible, then by any means necessary[-] to minimize damage to the natural resources and not become a hazard to navigation.

(f) All costs and expenses [of] related to removing the vessel and damage to state or private property shall be the sole responsibility of the vessel's owner or operator. The department may take legal action to collect any costs or expenses incurred by the department for any removal under this section. All moneys collected shall be deposited [in] into the boating special fund.

(g) Any person who renders assistance to the department when it acts pursuant to subsection (b) or [(e)] (d) and any person who, in good faith and without remuneration or expectation of remuneration, renders assistance at the scene of a vessel:

(1) Grounded on state submerged land, a shoreline, or a coral reef;

(2) In imminent danger of breaking up; or

(3) Grounded on a sand beach, sandbar, or mudflat [~~and not in imminent danger of breaking up~~],

shall not be liable for any civil damages resulting from the person's acts or omissions in providing or arranging towage or other assistance, except for damages caused by the person's gross negligence or wanton acts or omissions."

SECTION 7. Section 200-49, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(b) The owner, lien holder, or operator of the vessel shall have [~~ten~~] five working days after the date of the public notice or receipt of the mailed notice, whichever occurs later, to request [~~in writing~~] an administrative hearing. [~~This~~] A request for an administrative hearing [is] shall be made in writing to the department, shall not be deemed delivered until the time that the department receives the written request, and shall be solely for the purpose of allowing the owner, lien holder, or operator of [an] the impounded vessel to contest the basis given by the department for the impoundment of the vessel. The administrative hearing [must] shall be held within five working days of [the department's receipt] delivery of the written request.

(c) If the vessel is not repossessed within [~~twenty~~] ten working days after the date of the public notice or mailing of the notice, whichever occurs later, the vessel may be disposed of by negotiated sale except that, when two or more purchasers indicate an interest in purchasing the vessel, the vessel [~~will~~] shall be sold at public auction to the highest bidder[, ~~unless the vessel is exempt from public auction under section 200-45~~]. If no purchaser expresses a desire to pur-

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chase the vessel, the vessel may be destroyed or donated to any governmental agency.”

SECTION 8. Section 200-45, Hawaii Revised Statutes, is repealed.

SECTION 9. Statutory material to be repealed is bracketed and stricken.¹ New statutory material is underscored.

SECTION 10. This Act shall take effect upon its approval.

(Approved July 6, 2021.)

Note

1. Edited pursuant to HRS §23G-16.5.