

ACT 35

H.B. NO. 1653

A Bill for an Act Relating to Aquatic Resources.

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

SECTION 1. The legislature finds that Hawaii's aquatic resources are of significant economic, ecologic, cultural, and aesthetic importance to agriculture, tourism, food production, and fisheries in the State. The legislature recognizes the importance of managing and conserving Hawaii's aquatic resources and ecosystem for present and future generations. Careful stewardship and protection of Hawaii's aquatic resources are essential to the well-being of the State.

The purpose of this Act is to strengthen the penalties for violations of the State's aquatic resources law by:

- (1) Establishing a tiered administrative fine system for each specimen of aquatic life taken, killed, or injured;
- (2) Establishing a criminal fine structure on a per-specimen basis for violations involving aquatic life;
- (3) Authorizing the department of land and natural resources to recommend community service that benefits the resource damaged when a person is ordered to perform community service in lieu of a fine; and
- (4) Authorizing the department of land and natural resources to recommend to the court that defendants be restricted from entering specific geographical areas where aquatic resources may be found, including ocean waters, estuaries, rivers, and streams.

SECTION 2. Section 187A-12.5, Hawaii Revised Statutes, is amended by amending subsections (d) and (e) to read as follows:

~~“(d) [In addition to subsection (b), a fine of up to \$5,000]~~ A fine in addition to the fine under subsection (b) may be levied for each specimen of threatened or endangered aquatic life taken, killed, or injured in violation of subtitle 5 of title 12 or any rule adopted thereunder[-] as follows:

- (1) For a first violation, up to \$5,000 or the retail market value of the specimen, whichever is higher;
- (2) For a second violation, up to \$10,000 or the retail market value of the specimen, whichever is higher; and
- (3) For a third or subsequent violation, up to \$15,000 or the retail market value of the specimen, whichever is higher.

~~(e) [In addition to subsection (c), a fine of up to \$1,000]~~ A fine in addition to the fine under subsection (c) may be levied for each specimen of all other aquatic life taken, killed, or injured in violation of subtitle 5 of title 12 or any rule adopted thereunder[-] as follows:

- (1) For a first violation, up to \$1,000 or the retail market value of the specimen, whichever is higher;
- (2) For a second violation, up to \$2,000 or the retail market value of the specimen, whichever is higher; and
- (3) For a third or subsequent violation, up to \$3,000 or the retail market value of the specimen, whichever is higher.”

SECTION 3. Section 187A-13, Hawaii Revised Statutes, is amended to read as follows:

“§187A-13 General penalty; community service. (a) Any person violating this chapter or any rule adopted thereunder for which a penalty is not oth-

erwise provided, shall be guilty of a petty misdemeanor and, in addition to any other penalties, shall be fined not less than:

- (1) \$250 for a first offense;
- (2) \$500 for a second offense; and
- (3) \$1,000 for a third or subsequent offense.

(b) A fine in addition to the fine under subsection (a) may be levied for each specimen of aquatic life taken, killed, or injured in violation of this chapter or any rule adopted thereunder as follows:

- (1) For a first offense, up to \$250 or the retail market value of the specimen, whichever is higher;
- (2) For a second offense, up to \$500 or the retail market value of the specimen, whichever is higher; and
- (3) For a third or subsequent offense, up to \$1,000 or the retail market value of the specimen, whichever is higher.

~~[(b)]~~ (c) The court may require the defendant to complete an aquatic resources educational class administered by the department in addition to or in lieu of paying all or any part of any monetary fine authorized by this section.

~~[(e)]~~ (d) The court may direct the defendant to perform community service as administered by the department in lieu of paying any monetary fine authorized by this section[-]; provided that if community service is ordered pursuant to this subsection, the department may recommend to the court an order of community service that benefits the resource that was damaged.

(e) The department may recommend to the court that the defendant be sentenced to probation with probationary terms and conditions consistent with sections 706-623 and 706-624, including but not limited to restrictions on:

- (1) Entering specific geographical areas within waters of the State where aquatic resources may be found, including ocean waters, estuaries, rivers, and streams;
- (2) Engaging in certain fishing activities;
- (3) Handling, operating, or possessing certain fishing gear or boating equipment; and
- (4) Taking or possessing certain species of aquatic life.”

SECTION 4. Section 188-70, Hawaii Revised Statutes, is amended to read as follows:

“§188-70 Penalties. (a) Any person violating any provision of or any rule adopted pursuant to this chapter, except sections 188-23, 188-39.5, and 188-40.8, is guilty of a petty misdemeanor and, in addition to any other penalties, shall be fined no less than:

- (1) \$100 for a first offense;
- (2) \$200 for a second offense; and
- (3) \$500 for a third or subsequent offense.

(b) A fine in addition to the fine under subsection (a) may be levied for each specimen of aquatic life taken, killed, or injured in violation of this chapter or any rule adopted thereunder as follows:

- (1) For a first offense, up to \$100 or the retail market value of the specimen, whichever is higher;
- (2) For a second offense, up to \$200 or the retail market value of the specimen, whichever is higher; and
- (3) For a third or subsequent offense, up to \$500 or the retail market value of the specimen, whichever is higher.

~~[(b)]~~ (c) Any person violating section 188-23, is guilty of a class C felony and shall be sentenced pursuant to chapter 706; provided that the environmental court, in addition to any term of imprisonment or any other terms and con-

ditions of probation, shall order the defendant to pay a fine of not less than \$1,000. Notwithstanding section 706-669 and any other law to the contrary, any person in violation of section 188-23(b), as a first offense, shall be sentenced to a mandatory minimum period of imprisonment without possibility of parole of thirty days. Repeat offenders shall be sentenced pursuant to chapter 706.

~~[(e)] (d)~~ The environmental court may require the defendant to complete an aquatic resources educational class administered by the department of land and natural resources in addition to or in lieu of paying all or any part of any monetary fine authorized by this section.

~~[(d)] (e)~~ The environmental court may direct the defendant to perform community service as administered by the department of land and natural resources in lieu of paying any monetary fine authorized by this section~~[-]; provided that if community service is ordered pursuant to this subsection, the department of land and natural resources may recommend to the environmental court an order of community service that benefits the resource that was damaged.~~

~~(f)~~ The department of land and natural resources may recommend to the environmental court that the defendant be sentenced to probation with probationary terms and conditions consistent with sections 706-623 and 706-624, including but not limited to restrictions on:

- ~~(1)~~ Entering specific geographical areas within waters of the State where aquatic resources may be found, including ocean waters, estuaries, rivers, and streams;
- ~~(2)~~ Engaging in certain fishing activities;
- ~~(3)~~ Handling, operating, or possessing certain fishing gear or boating equipment; and
- ~~(4)~~ Taking or possessing certain species of aquatic life.”

SECTION 5. Section 189-4, Hawaii Revised Statutes, is amended to read as follows:

“§189-4 Penalties. (a) Any person violating any of the provisions of this chapter for which a penalty is not otherwise provided, or any rule of the department adopted thereunder, shall be guilty of a petty misdemeanor and punishable as provided in subsection (b); provided that in the case of a corporation violating any of the provisions, only the fine shall be imposed, but any officer of the corporation who wilfully procures or permits the violation of the provisions by the corporation shall be punishable as in the case of an individual violating the same.

(b) The punishment, in addition to any other penalties, shall be a fine of not less than:

- (1) \$250 for a first offense;
- (2) \$500 for a second offense; and
- (3) \$1,000 for a third or subsequent offense.

~~(c)~~ A fine in addition to the fine under subsection (b) may be levied for each specimen of aquatic life taken, killed, injured, or sold in violation of this chapter or any rule adopted thereunder as follows:

- ~~(1)~~ For a first offense, up to \$250 or the retail market value of the specimen, whichever is higher;
- ~~(2)~~ For a second offense, up to \$500 or the retail market value of the specimen, whichever is higher; and
- ~~(3)~~ For a third or subsequent offense, up to \$1,000 or the retail market value of the specimen, whichever is higher.

~~[(e)] (d)~~ The fines specified in this section shall not be suspended or waived.

(e) The department may recommend to the court that the defendant be sentenced to probation with probationary terms and conditions consistent with sections 706-623 and 706-624, including but not limited to restrictions on:

- (1) Entering specific geographical areas within waters of the State where aquatic resources may be found, including ocean waters, estuaries, rivers, and streams;
- (2) Engaging in certain fishing activities;
- (3) Handling, operating, or possessing certain fishing gear or boating equipment; and
- (4) Taking or possessing certain species of aquatic life.”

SECTION 6. Section 190-5, Hawaii Revised Statutes, is amended to read as follows:

“§190-5 Penalty. (a) Any person violating this chapter, any rule adopted pursuant thereto, or the terms and conditions of any permit issued under section 190-4, shall be guilty of a petty misdemeanor and punished as provided in subsections (b) ~~[and (c)], (c), and (d).~~

(b) The punishment, in addition to any other penalties, shall be a fine of not less than:

- (1) \$250 for a first offense;
- (2) \$500 for a second offense; and
- (3) \$1,000 for a third or subsequent offense.

(c) A fine in addition to the fine under subsection (b) may be levied for each specimen of aquatic life taken, killed, or injured in violation of this chapter or any rule adopted thereunder as follows:

- (1) For a first offense, up to \$250 or the retail market value of the specimen, whichever is higher;
- (2) For a second offense, up to \$500 or the retail market value of the specimen, whichever is higher; and
- (3) For a third or subsequent offense, up to \$1,000 or the retail market value of the specimen, whichever is higher.

~~[(e)] (d)~~ The court may require the defendant to complete an aquatic resources educational class administered by the department of land and natural resources in addition to or in lieu of paying all or any part of any monetary fine authorized by this section.

~~[(d)] (e)~~ The court may allow the defendant to perform community service as administered by the department of land and natural resources in lieu of paying any monetary fine authorized by this section~~[-]; provided that if community service is ordered pursuant to this subsection, the department of land and natural resources may recommend to the court an order of community service that benefits the resource that was damaged.~~

(f) The department of land and natural resources may recommend to the court that the defendant be sentenced to probation with probationary terms and conditions consistent with sections 706-623 and 706-624, including but not limited to restrictions on:

- (1) Entering specific geographical areas within waters of the State where aquatic resources may be found, including ocean waters, estuaries, rivers, and streams;
- (2) Engaging in certain fishing activities;
- (3) Handling, operating, or possessing certain fishing gear or boating equipment; and
- (4) Taking or possessing certain species of aquatic life.”

SECTION 7. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 9. This Act shall take effect on July 1, 2022.

(Approved June 8, 2022.)