
A BILL FOR AN ACT

RELATING TO AQUATIC LIFE.

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

1 SECTION 1. The legislature finds that hundreds of
2 thousands of saltwater fish and other aquatic life, such as
3 invertebrates, are annually removed from their natural ocean
4 habitat in Hawai'i to be kept in aquariums in homes throughout
5 the State and country. These fish and other aquatic life are
6 caught and sold as part of the aquarium trade industry for
7 ornamentation and amusement, not for food purposes.

8 The legislature also finds that the State's aquarium fish
9 permit authorizes the taking of an unlimited number of fish and
10 other aquatic life for commercial aquarium purposes, and up to
11 two thousand fish and other aquatic life annually for
12 recreational aquarium purposes, using nets and traps containing
13 stretched netting of less than two-inch mesh. While a fine mesh
14 net or trap is not physically required in order to remove
15 aquatic life for aquarium purposes, it is generally believed to
16 be more effective than using other gear that does not require a
17 permit, as the mesh is tight enough to keep fish from escaping.



1 The fine mesh nets and traps can be used both near the surface
2 of the ocean and at depths reached by scuba diving. The
3 legislature notes that for takings that do not require an
4 aquarium fish permit, there are generally no restrictions on the
5 number of fish and aquatic life that can be taken for aquarium
6 purposes. Like humans, any fish caught deep below the surface
7 will need to decompress before being brought to the surface.
8 The fish is then put in a bucket or other storage container to
9 take to shore, where it will begin its journey through various
10 temporary tanks and diverse conditions to travel across the
11 State or to other parts of the globe.

12 The legislature further finds that, as a precautionary
13 principle and since salt water fish and other aquatic life
14 caught for aquarium purposes are not used for food purposes, it
15 is in the best interest of the fish and other aquatic life, as
16 well as of the reefs they inhabit, that they remain in their
17 natural environment, not confined in aquarium tanks. Therefore,
18 the legislature concludes that aquarium fish collecting for
19 commercial purposes in Hawai'i should be phased out.

20 The legislature acknowledges the recent litigation in
21 *Umberger v. Department of Land and Natural Resources*, 140 Hawaii



1 500, 403 P.3d 277 (2017) and subsequent order after remand by
2 the circuit court issued on October 27, 2017, that resulted in
3 the invalidation of all existing aquarium fish permits used for
4 commercial aquarium collection purposes. The circuit court also
5 found that the department of land and natural resources'
6 practice of issuing commercial aquarium collection permits
7 without an environmental review as required by the Hawaii
8 Environmental Policy Act was a violation of that Act, and thus
9 enjoined the department from issuing or renewing aquarium fish
10 permits to commercial collectors until further order of the
11 circuit court. Collecting for recreational purposes was not
12 affected by the circuit court's order.

13 To phase out commercial collecting while also protecting
14 existing businesses, this Act will allow the department of land
15 and natural resources to issue new aquarium fish permits, to be
16 used for commercial purposes, during a four-month window
17 beginning on the lifting of the *Umberger v. Department of Land*
18 *and Natural Resources* injunction, if it is lifted. The
19 department of land and natural resources will be prohibited from
20 issuing new aquarium fish permits for commercial and non-
21 commercial purposes after that four-month window. Permits will



1 be able to be transferred for a period of five years to
2 commercial collectors who also possess a commercial marine
3 license. Non-commercial collectors, whether with nets or traps
4 allowed by the aquarium fish permit or by other means not
5 requiring an aquarium fish permit, will be held to the existing
6 collection limit of five aquatic specimens per day.

7 This Act is not, however, intended to encourage residents
8 and tourists to go into the water to view or catch aquarium fish
9 unless sufficient safety measures and adequate environmental
10 precautions are taken. Furthermore, this Act is not intended to
11 overrule the Hawai'i supreme court's decision in *Umberger v.*
12 *Department of Land and Natural Resources* and the subsequent
13 circuit court order upon remand, nor negate the State's
14 constitutional and statutory obligations to conserve fishery
15 resources in the State.

16 The purpose of this Act is to:

- 17 (1) Prohibit the department of land and natural resources
18 from issuing new aquarium fish permits to take aquatic
19 life for commercial or non-commercial aquarium
20 purposes, except for a period of four months if the
21 injunction order as a result of *Umberger v. Department*



1 *of Land and Natural Resources*, if applicable, is
2 lifted;

3 (2) Phase out the taking of aquatic life for commercial
4 aquarium purposes by any method of catch, though
5 allowing aquarium fish permits to be annually renewed
6 by individuals possessing a commercial marine license
7 and, for a period of five years after the injunction
8 order as a result of *Umberger v. Department of Land*
9 *and Natural Resources*, if applicable, is lifted,
10 transferrable to another individual who possesses a
11 commercial marine license;

12 (3) Continue to allow the taking of aquatic life for non-
13 commercial aquarium purposes using certain nets or
14 traps with an aquarium fish permit, and clarify that
15 non-commercial aquarium collecting by any method of
16 catch is subject to a limit of five fish or aquatic
17 life specimens per person, per day; and

18 (4) Allow a commercial marine licensee to assist another
19 commercial marine licensee who holds a valid, non-
20 lapsed aquarium permit with the taking of aquatic life
21 for commercial aquarium purposes.



SECTION 2. Section 188-31, Hawaii Revised Statutes, is amended to read as follows:

"§188-31 Permits to take aquatic life for aquarium purposes ~~[-]; prohibitions.~~ (a) ~~[Except as prohibited by law, the department, upon receipt of a written application, may issue an aquarium fish permit, not longer than one year in duration, to use fine meshed traps, or fine meshed nets other than throw nets, for the taking of marine or freshwater nongame fish and other aquatic life for aquarium purposes.]~~ It shall be unlawful for a person to take saltwater fish, freshwater nongame fish, or other aquatic life for commercial aquarium purposes by any method of catch without possessing a valid, non-lapsed aquarium fish permit and a commercial marine license, as defined in section 187A-1; provided that the taking is not otherwise prohibited by law.

(b) It shall be unlawful for a person to use fine meshed traps or fine meshed nets, other than throw nets, to take saltwater fish, freshwater nongame fish, or other aquatic life for non-commercial aquarium purposes without possessing a valid, non-lapsed aquarium fish permit. The taking for non-commercial aquarium purposes, whether pursuant to an aquarium fish permit



1 or by other means of take, shall be limited to no more than a
2 combined total of five saltwater fish, freshwater nongame fish,
3 or other aquatic life specimens per person, per day.

4 (c) The department of land and natural resources may issue
5 new aquarium fish permits for commercial or non-commercial
6 aquarium purposes for a four-month period beginning on the
7 effective date of this subsection pursuant to section 5 of
8 Act , Session Laws of Hawaii 2018. Upon receipt of a
9 written application, the department may issue an aquarium fish
10 permit that is valid for a period not to exceed one year for the
11 taking of saltwater fish, freshwater nongame fish, or other
12 aquatic life for commercial or non-commercial aquarium purposes.
13 Subsequent to the four-month period, the department of land and
14 natural resources shall be prohibited from issuing new aquarium
15 fish permits, whether for commercial or non-commercial aquarium
16 purposes.

17 (d) Unless otherwise prohibited by law, the department of
18 land and natural resources may renew on an annual basis an
19 existing aquarium fish permit; provided that the existing permit
20 has not lapsed at the time of the renewal and complies with
21 subsection (f).



1 (e) Unless otherwise prohibited by law, for a period of
2 five years beginning upon the effective date of subsection (c)
3 pursuant to section 5 of Act , Session Laws of Hawaii 2018,
4 the department of land and natural resources may transfer an
5 existing aquarium fish permit; provided that the permit has not
6 lapsed at the time of transfer and complies with subsection (f).

7 ~~[(b)]~~ (f) Except as prohibited by law, [the] new aquarium
8 fish permits shall be issued only in accordance with subsection
9 (c) to, and non-lapsed aquarium fish permits shall be renewed
10 only in accordance with subsection (d) by or transferred only in
11 accordance with subsection (e) to, persons who [ean]:

12 (1) Can satisfy the department of land and natural
13 resources that they possess facilities to and can
14 maintain fish and other aquatic life alive and in
15 reasonable health[-]; and

16 (2) Have not been convicted of the offense of animal
17 cruelty in the second degree under section 711-1109
18 within a five-year period prior to the issuing,
19 renewing, or transferring of the aquarium fish permit.

20 ~~[(e)]~~ (g) It shall be illegal to sell or offer for sale
21 any saltwater fish, freshwater nongame fish [and], or other



1 aquatic life taken under an aquarium fish permit unless those
2 fish ~~[and]~~ or other aquatic life are sold alive for aquarium
3 purposes.

4 The department may adopt rules pursuant to chapter 91 for
5 the purpose of this section.

6 (h) This section shall not prohibit any commercial marine
7 licensee, as defined in section 187A-1, from assisting another
8 commercial marine licensee who holds a valid, non-lapsed
9 aquarium fish permit with the taking of any saltwater fish,
10 freshwater nongame fish, or other aquatic life for commercial
11 aquarium purposes; provided that the assistance does not involve
12 the use of any gear, equipment, tools, or other means to take
13 saltwater fish, freshwater nongame fish, or other aquatic life
14 for aquarium purposes.

15 (i) Nothing in this section shall be construed to alter
16 the State's constitutional and statutory obligations to conserve
17 the fishery resources of the State pursuant to article XI,
18 sections 1 and 6, of the Hawaii State Constitution.

19 ~~[-d)]~~ (j) For the purposes of this section:

20 ~~[(1) "Aquarium purposes" means to hold salt water fish,~~
21 ~~freshwater nongame fish, or other aquatic life alive~~



1 ~~in a state of captivity as pets, for scientific study,~~
2 ~~or for public exhibition or display, or for sale for~~
3 ~~these purposes; and~~

4 (2)] "Aquarium fish permit" means a permit issued by the
5 [board] department of land and natural resources for
6 the use of fine mesh nets and traps, other than throw
7 nets, to take [~~salt water~~] saltwater fish, freshwater
8 nongame fish, or other aquatic life for aquarium
9 purposes.

10 "Aquarium purposes" means to hold saltwater fish,
11 freshwater nongame fish, or other aquatic life alive in a state
12 of captivity as pets, for scientific study, or for public
13 exhibition or display, or for sale for these purposes.

14 "Commercial aquarium purposes" means the taking of marine
15 life for aquarium purposes for profit or gain or as a means of
16 livelihood where the marine life is taken in or outside of the
17 State, or where the marine life is sold, offered for sale,
18 landed, or transported for sale anywhere in the State.

19 "Fine mesh", or "fine meshed", means stretched mesh of less
20 than two inches, as used in netting to collect saltwater fish,
21 freshwater nongame fish or other aquatic life.



1 "Lapsed" means an aquarium fish permit issued by the
2 department of land and natural resources that has not been
3 renewed prior to the expiration date of the permit or has not
4 been renewed for five or more years immediately preceding the
5 time of the transfer of the permit.

6 "Non-commercial aquarium purposes" means the taking of
7 marine life for aquarium purposes for recreation and not for
8 profit or gain nor as a means of livelihood."

9 SECTION 3. If any provision of this Act, or the
10 application thereof to any person or circumstance, is held
11 invalid, the invalidity does not affect other provisions or
12 applications of the Act that can be given effect without the
13 invalid provision or application, and to this end the provisions
14 of this Act are severable.

15 SECTION 4. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 5. This Act shall take effect on July 1, 2018;
18 provided that section 188-31(c), Hawaii Revised Statutes, under
19 section 2 of this Act shall take effect upon the date that the
20 injunction order as a result of *Umberger v. Department of Land*
21 *and Natural Resources*, 140 Hawaii 500, 403 P.3d 277 (2017), is



1 lifted, or the final disposition of *Umberger v. Department of*
2 *Land and Natural Resources*, whichever occurs earlier.
3



Report Title:

Aquarium Fish Permits; Commercial Marine License; Transfer or Renewal

Description:

Prohibits the department of land and natural resources from issuing new aquarium fish permits to take aquatic life for commercial or non-commercial aquarium purposes, except for a period of four months. Phases out the taking of aquatic life for commercial aquarium purposes by any method of catch, though allowing aquarium fish permits to be annually renewed by individuals possessing a commercial marine license and, for a period of five years, transferrable to another individual who possesses a commercial marine license. Continues to allow the taking of aquatic life for non-commercial aquarium purposes using certain nets or traps with an aquarium fish permit, and clarifies that non-commercial aquarium collecting by any method of catch is subject to a limit of five fish or aquatic life specimens per person, per day. Allows a commercial marine licensee to assist another commercial marine licensee who holds a valid, non-lapsed aquarium permit with the taking of aquatic life for commercial aquarium purposes. (SD1)

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



Report Title:

Teacher Home Assistance Program; Hawaii Housing Finance and Development Corporation; Appropriation

Description:

Establishes the teacher home assistance program to be administered by the Hawaii Housing Finance and Development Corporation to provide housing vouchers to full-time teachers employed by the department of education, including teachers at public charter schools, who teach in a hard-to-fill school, as determined by the department of education, and whose household income does not exceed eighty per cent of the area median income. Appropriates funds. (SD1)

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