
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 affected 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, overcommercialization 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
17 commercial ocean activity laws and restrictions. Subsequently,



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

8 Therefore, the purpose of this Act is to, for purposes of
9 regulating commercial activity under the laws regulating ocean
10 recreation:

- 11 (1) Provide that advertisements and offers of unpermitted
12 commercial ocean use activities or commercial ocean
13 recreational equipment are prima facie evidence that:
14 (A) The owner disseminated or directed dissemination
15 of the advertisements or offers; and
16 (B) The commercial activity is operated at the
17 location advertised or offered; and
18 (2) Include advertisements and offers within the
19 definition of "commercial activity".



1 SECTION 2. Chapter 200, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§200- Unpermitted commercial activity; prima facie
5 evidence; burden of proof. (a) For purposes of determining
6 whether an administrative violation of commercial activity
7 restrictions under this chapter or rules adopted by the
8 department has occurred, advertisement or offers in print; by
9 word of mouth; or online in any form, including through social
10 media, of unpermitted commercial ocean use activities or
11 commercial ocean recreational equipment shall be prima facie
12 evidence that:

13 (1) The owner of the advertised or offered commercial
14 activity disseminated or directed the dissemination of
15 the advertisement or offer in that form and manner;
16 and

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

19 (b) The burden of proof shall be on a person charged with
20 an administrative violation of commercial activity restrictions
21 under this chapter or rules adopted by the department to



1 establish that vessels or equipment, or both, are not being used
2 for unpermitted commercial activity or that the person's conduct
3 is authorized pursuant to a permit, lease, or license issued by
4 the department.

5 (c) As used in this section:

6 "Administrative violation" means any violation enforced
7 administratively by the board pursuant to section 200-14.5.

8 "Commercial activity" has the same meaning as in section
9 200-4(a).

10 "Social media" means any form of electronic communication
11 through which users create online communities to share
12 information, personal messages, and other content, offered from
13 platforms, including but not limited to Facebook, Foursquare,
14 Instagram, Reddit, TikTok, Tripadvisor, X, Yelp, and YouTube."

15 SECTION 3. Section 200-4, Hawaii Revised Statutes, is
16 amended by amending subsection (a) to read as follows:

17 "(a) The chairperson may adopt rules necessary:

18 (1) To regulate the manner in which all vessels may enter
19 the ocean waters and navigable streams of the State
20 and moor, anchor, or dock at small boat harbors,



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



1 the small boat harbors, launching ramps, other boating
2 facilities, ocean waters, and streams unsightly,
3 unhealthful, or unclean, or that are liable to fill
4 up, shoal, or shallow the waters in, near, or
5 affecting small boat harbors, launching ramps, and
6 other boating facilities and the ocean waters and
7 navigable streams of the State, and likewise to
8 prevent the escape of fuel or other oils or substances
9 into the waters in, near, or affecting small boat
10 harbors, launching ramps, or other boating facilities
11 and the ocean waters and navigable streams of the
12 State from any source point, including but not limited
13 to any vessel or from pipes or storage tanks upon
14 land, including:

15 (A) Requirements for permits and fees for:

16 (i) The mooring, docking, or anchoring of
17 recreational and commercial vessels or the
18 launching of recreational or commercial
19 vessels at small boat harbors, launching
20 ramps, and other boating facilities; or

21 (ii) Other uses of these facilities;



- 1 (B) Requirements for permits and fees for use of a
- 2 vessel as a principal place of habitation while
- 3 moored at a state small boat harbor;
- 4 (C) Requirements governing:
 - 5 (i) The transfer of any state commercial,
 - 6 mooring, launching, or any other type of use
 - 7 or other permit, directly or indirectly,
 - 8 including but not limited to the imposition
 - 9 or assessment of a business transfer fee
 - 10 upon transfer of ownership of vessels
 - 11 operating commercially from, within or in
 - 12 any way related to the state small boat
 - 13 harbors; and
 - 14 (ii) The use of state small boat harbors,
 - 15 launching ramps, or other boating facilities
 - 16 belonging to or controlled by the State,
 - 17 including but not limited to the
 - 18 establishment of minimum amounts of annual
 - 19 gross receipts required to renew a
 - 20 commercial use permit, and conditions under
 - 21 which a state commercial, mooring,



1 launching, or any other type of use or other
2 permit may be terminated, canceled, or
3 forfeited; and

4 (D) Any other rule necessary to implement this
5 chapter pertaining to small boat harbors,
6 launching ramps, and other boating facilities
7 belonging to or controlled by the State;

8 (7) To continue the ocean recreational and coastal areas
9 programs and govern the ocean waters and navigable
10 streams of the State, and beaches encumbered with
11 easements in favor of the public to protect and foster
12 public peace and tranquility and to promote public
13 safety, health, and welfare in or on the ocean waters
14 and navigable streams of the State, and on beaches
15 encumbered with easements in favor of the public,
16 including:

17 (A) Regulating the anchoring and mooring of vessels,
18 houseboats, and other contrivances outside of any
19 harbor or boating facility, including:

20 (i) The designation of offshore mooring areas;



1 (ii) The licensing and registration of vessels,
2 houseboats, and other contrivances; and the
3 issuance of permits for offshore anchoring
4 and mooring of vessels, houseboats, and
5 other contrivances; and

6 (iii) The living aboard on vessels, houseboats, or
7 other contrivances while they are anchored
8 or moored within ocean waters or navigable
9 streams of the State.

10 The rules shall provide for consideration of
11 environmental impacts on the State's aquatic
12 resources in the issuance of any permits for
13 offshore mooring;

14 (B) Safety measures, requirements, and practices in
15 or on the ocean waters and navigable streams of
16 the State;

17 (C) The licensing and registration of persons or
18 organizations engaged in commercial activities in
19 or on the ocean waters and navigable streams of
20 the State;



- 1 (D) The licensing and registration of equipment
- 2 utilized for commercial activities in or on the
- 3 ocean waters and navigable streams of the State;
- 4 (E) For beaches encumbered with easements in favor of
- 5 the public, the prohibition or denial of the
- 6 following uses and activities:
- 7 (i) Commercial activities;
- 8 (ii) The storage, parking, and display of any
- 9 personal property;
- 10 (iii) The placement of structures or obstructions;
- 11 (iv) The beaching, landing, mooring, or anchoring
- 12 of any vessels; and
- 13 (v) Other uses or activities that may interfere
- 14 with the public use and enjoyment of these
- 15 beaches; and
- 16 (F) Any other matter relating to the safety, health,
- 17 and welfare of the general public;
- 18 (8) To regulate the examination, guidance, and control of
- 19 harbor agents and their assistants; and
- 20 (9) To regulate commercial activities in state waters
- 21 including operations originating from private marinas;



1 provided that no new or additional permits shall be
2 required for those commercial activities regulated by
3 any other chapter.

4 For the purposes of this paragraph:

5 "Commercial activity" means to engage in any
6 action or attempt to engage in any action for
7 compensation in any form. The action or actions may
8 include providing or attempting to provide,
9 advertising, or offering or attempting to offer guide
10 services, charters, tours, and transportation to and
11 from the location or locations for which such services
12 are provided.

13 "Compensation" means money, barter, trade,
14 credit, and other instruments of value, goods, and
15 other forms of payment."

16 SECTION 4. New statutory material is underscored.

17 SECTION 5. This Act shall take effect on July 1, 2024.



Report Title:

Commercial Ocean Activity; Unpermitted Commercial Activity;
Advertisements and Offers

Description:

Provides that advertisements or offers of unpermitted commercial ocean use activities or commercial ocean recreational equipment are prima facie evidence that the owner disseminated or directed dissemination of such advertisements or offers and the commercial activity is operated at the location advertised or offered. Includes advertisements and offers in the definition of "commercial activity" as used in the state ocean recreation and coastal areas laws. (CD1)

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

