

ACT 232

H.B. NO. 1134

A Bill for an Act Relating to Kaneohe Bay.

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

SECTION 1. The legislature finds that Kaneohe Bay, including Ahu o Laka, also known as the sandbar, has a rich cultural history that blends into the understanding of present-day significance and is a sacred wahi pana to the Native Hawaiian lineal and generational inhabitants of Koolaupoko, which includes Waimanalo, Kailua, Kaneohe, Heeia, Kahaluu, Waihee, Kaalaea, Waiahole, Waikane, Hakipuu, and Kualoa. Over the years, over-commercialization of Kaneohe Bay, including Ahu o Laka, has been unnaturally encouraged via social media and through unpermitted tour operators who advertise and operate without regard for laws, rules, regulations, and cultural awareness. Kaneohe Bay and attractions in the bay such as Ahu o Laka are advertised as “must see” tourist stops without the mention of cultural awareness or significance, and non-permitted commercial operators set up advertisements and online payment schemes and bring guests, circumventing principles and intentions of the original 1992 Kaneohe Bay master plan. This problem is exacerbated because state entities responsible for protecting resources do not work on weekends or holidays, which encourages noncompliance with laws, rules, and regulations. Furthermore, unauthorized advertising on social media and online has led to

increased private and rental vehicles parking illegally at Heeia boat harbor and along both sides of Kamehameha highway, causing unsafe traffic conditions.

The legislature further finds that the Kaneohe Bay master plan was developed pursuant to Act 208, Session Laws of Hawaii 1990, which established a framework for the sustainable management of the bay's natural resources while accommodating a variety of uses. A compromise of competing interests resulted in a cap on the number of commercial enterprises and volume of permitted commercial activity. The vision continues to be the preservation and protection of the bay's natural resources for the continued enjoyment of all.

The legislature also finds that limits on commercial activity have been exceeded by other activities not previously envisioned and by new technologies that support their proliferation. Examples include the pre-positioning of rental kayaks at Heeia state park and Heeia Kea pier; internet advertisements for boats, kayaks, and other commercial recreational uses; and the ability of customers to pay online and through mobile money transfer platforms such as Venmo.

Accordingly, the purpose of this Act is to update the law regarding restricted activities in Kaneohe Bay.

SECTION 2. Section 200-24, Hawaii Revised Statutes, is amended to read as follows:

“[H§200-24]] Rules. The department shall adopt rules pursuant to chapter 91 to implement the policy and purpose of this part, and to classify vessels into appropriate categories and classes.

The department shall adopt rules pursuant to chapter 91 with respect to the following:

- (1) The registration and numbering of vessels;
- (2) The operation, use, and equipment of vessels on or in the waters of the State;
- (3) The conduct of persons involved in boating accidents and in the reporting of accidents and other casualties and losses to the department; ~~and~~
- (4) The designation of areas of the waters of the State and time periods during which thrill craft may be operated, and waters on or above which, and time periods during which, persons may engage in parasailing, commercial high speed boating, and water sledding; provided that in designating the areas, the department shall use the official recommendation of the National Marine Fisheries Service with regard to the protection of protected marine life and habitats in adopting rules to implement this section, except as otherwise provided by law[-]; and
- (5) Procedures for a law enforcement officer to issue subpoenas or take custody of property pursuant to section 200-39(g).”

SECTION 3. Section 200-39, Hawaii Revised Statutes, is amended to read as follows:

“§200-39 Kaneohe Bay commercial ocean use activities; permits; restrictions. ~~[(a)—For the purposes of this section, “ocean use activities” means commercial operation of thrill craft, high speed boating, parasailing, water sledding, sailing and snorkeling tours, glassbottom boat tours, or any other similar commercial ocean recreation activity for hire.~~

~~[(b)]~~ (a) Any other provision of this chapter to the contrary notwithstanding, no person shall operate thrill craft, parasailing, water sledding, or commercial high speed boating unless the person meets the requirements of

section 200-37 and all rules adopted by the department that regulate or restrict these activities.

(b) No person shall conduct any commercial ocean use activity within Kaneohe Bay waters without a permit issued by the department.

(c) No person shall advertise or otherwise offer any commercial ocean use activity or equipment for such activity within Kaneohe Bay waters for which the person does not have a permit from the department. Advertisement in print; by word of mouth; or online in any form, including through social media, of unpermitted commercial ocean use activities or commercial ocean recreational equipment shall be prima facie evidence that:

- (1) The owner of the advertised commercial ocean use activity or commercial ocean recreational equipment disseminated or directed the dissemination of the advertisement in that form and manner; and
- (2) The commercial ocean use activity or commercial ocean recreational equipment is being operated at the location advertised.

The burden of proof shall be on a person charged with a violation of this section to establish that the equipment is not being used for unpermitted commercial ocean use activity or that the person's conduct is pursuant to a permit, lease, or license issued by the department.

~~[(e)]~~ (d) Permits issued by the department for ~~[the]~~ commercial ~~[operation of]~~ ocean use activities in Kaneohe Bay shall be limited to the number and locations, by permit type and vessel and passenger capacity, provided in the Kaneohe Bay master plan developed pursuant to Act 208, Session Laws of Hawaii 1990, until applicable rules consistent with the master plan are adopted by the department; provided that the passenger capacity for snorkeling tours and glassbottom boat tours shall be set through rules adopted pursuant to chapter 91. No thrill craft permit may be transferred after June 21, 1998; provided that transfers of permits may be made at any time between family members.

~~[(d)]~~ (e) On Sundays and federal holidays, all commercial ocean use activities shall be prohibited.

~~[(e)]~~ (f) All rules adopted by the department with regard to Kaneohe Bay shall be drafted in consultation with the Kaneohe Bay regional council. For those provisions of the Kaneohe Bay master plan previously adopted by the legislature, the rules adopted by the department shall be in accordance with those provisions. Notwithstanding subsection ~~[(e)]~~ (d) to the contrary, if the department determines for safety or environmental protection reasons that a permitted use should be relocated, the department may relocate the permitted use and the department shall have discretion to permit vessel substitution with a similar length vessel; provided that the increase is ~~[not]~~ no greater than ten per cent of the current vessel length.

For those provisions of the Kaneohe Bay master plan developed pursuant to Act 208, Session Laws of Hawaii 1990, not previously adopted by the legislature, the master plan shall be used as the recommended guideline in the adoption and implementation of rules with regard to the regulation of all activities in Kaneohe Bay.

(g) Citations for violations of this section or any rules of the department adopted pursuant to this section may be issued by any law enforcement officer. In enforcing this section, any law enforcement officer shall have the power to issue subpoenas and take legal custody of any personal property that is the subject of or related to any violation of this section or rules established by the department pursuant to this section.

(h) Property confiscated pursuant to this section may be released only upon approval by the board or a court of competent jurisdiction. Storage of confiscated property shall be at the sole risk and expense to the owner. The

department may charge reasonable storage fees to the owner for storage of any property confiscated pursuant to this section.

(i) Any property confiscated pursuant to this section that remains unclaimed for more than ten working days after it has been released pursuant to subsection (h) may be sold at public auction. If the department does not, or is unable to, sell the property at public auction, the department, after giving public notice of intended disposition, if that notice was not previously included in a public auction notice, may sell the property by negotiation, retain and use the property, donate the property to any other government agency, or dispose of the property as junk.

(j) Any penalties established in rule pursuant to this section shall be separate and in addition to any other fees, charges, and fines imposed by the department.

(k) As used in this section:

“Commercial ocean recreational equipment” means thrill craft; watercraft for high-speed boating, parasailing, water sledding, sailing, snorkeling, diving tours, fishing tours, or glassbottom boat tours; kayaks; canoes; any manner of surfboards, sailboards, paddleboards, or related watercraft; or watercraft for any other similar commercial ocean activity.

“Commercial ocean use activity” means and includes:

- (1) Any commercial operation of commercial ocean recreational equipment, or any other similar commercial ocean activity;
- (2) Providing any commercial ocean recreational equipment for rent or hire; or
- (3) Delivering for hire or pre-positioning within one thousand feet of any shoreline of Kaneohe Bay for hire, any commercial ocean recreational equipment.

“Commercial ocean use activity” shall not include commercial fishing, commercial ocean activity authorized by a permit issued by the department, or activity authorized by an existing lease or license issued by the department.”

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

SECTION 5. This Act shall take effect on July 1, 2023.

(Approved July 6, 2023.)