

ACT 227

H.B. NO. 2475

A Bill for an Act Relating to Commercial Ocean Activity.

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

SECTION 1. The department of land and natural resources (department) division of boating and ocean recreation is responsible for ocean recreation management in state ocean waters, among other responsibilities. Public safety and marine natural resources can be affected by a variety of environmental factors and emerging ocean recreation technologies, some of which may change rapidly and frequently. This Act is part of a comprehensive ocean recreation management package put forth by the department to ensure effective natural resource protection by providing better management and enforcement tools.

Over the years, overcommercialization of state ocean waters has been unnaturally encouraged via social media and through unpermitted ocean tour operators who advertise and operate without regard for laws, rules, regulations, and cultural awareness. These unpermitted commercial operators set up advertisements and online payment schemes, circumventing commercial ocean activity laws and restrictions. Subsequently, when attempting to enforce laws against illegal commercial activity, department staff have oftentimes encountered difficulty in proving that commercial activity or compensation of the alleged illegal commercial operator occurred. Many illegal commercial operators and their

customers claim that a commercial tour is a “friends and family” outing for no compensation, preventing effective enforcement.

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

- (1) Provide that advertisements and offers of unpermitted commercial ocean use activities or commercial ocean recreational equipment are prima facie evidence that:
 - (A) The owner disseminated or directed dissemination of the advertisements or offers; and
 - (B) The commercial activity is operated at the location advertised or offered; and
- (2) Include advertisements and offers within the definition of “commercial activity”.

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

“§200- Unpermitted commercial activity; prima facie evidence; burden of proof. (a) For purposes of determining whether an administrative violation of commercial activity restrictions under this chapter or rules adopted by the department has occurred, advertisement or offers 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 or offered commercial activity disseminated or directed the dissemination of the advertisement or offer in that form and manner; and
- (2) The commercial activity is being operated at the location advertised or offered.

(b) The burden of proof shall be on a person charged with an administrative violation of commercial activity restrictions under this chapter or rules adopted by the department to establish that vessels or equipment, or both, are not being used for unpermitted commercial activity or that the person’s conduct is authorized pursuant to a permit, lease, or license issued by the department.

(c) As used in this section:

“Administrative violation” means any violation enforced administratively by the board pursuant to section 200-14.5.

“Commercial activity” has the same meaning as in section 200-4(a).

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

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

“(a) The chairperson may adopt rules necessary:

- (1) To regulate the manner in which all vessels may enter the ocean waters and navigable streams of the State and moor, anchor, or dock at small boat harbors, launching ramps, and other boating facilities owned or controlled by the State;

- (2) To regulate the embarking and disembarking of passengers at small boat harbors, launching ramps, other boating facilities, and public beaches;
- (3) For the safety of small boat harbors, launching ramps, and other boating facilities, and the vessels anchored or moored therein;
- (4) For the conduct of the public using small boat harbors, launching ramps, and other boating facilities owned or controlled by the State;
- (5) To regulate and control recreational and commercial use of small boat harbors, launching ramps, and other boating facilities owned or controlled by the State and the ocean waters and navigable streams of the State;
- (6) To prevent the discharge or throwing into small boat harbors, launching ramps, other boating facilities, ocean waters, and navigable streams, of rubbish, refuse, garbage, or other substances likely to affect the quality of the water or that contribute to making the small boat harbors, launching ramps, other boating facilities, ocean waters, and streams unsightly, unhealthful, or unclean, or that are liable to fill up, shoal, or shallow the waters in, near, or affecting small boat harbors, launching ramps, and other boating facilities and the ocean waters and navigable streams of the State, and likewise to prevent the escape of fuel or other oils or substances into the waters in, near, or affecting small boat harbors, launching ramps, or other boating facilities and the ocean waters and navigable streams of the State from any source point, including but not limited to any vessel or from pipes or storage tanks upon land, including:
 - (A) Requirements for permits and fees for:
 - (i) The mooring, docking, or anchoring of recreational and commercial vessels or the launching of recreational or commercial vessels at small boat harbors, launching ramps, and other boating facilities; or
 - (ii) Other uses of these facilities;
 - (B) Requirements for permits and fees for use of a vessel as a principal place of habitation while moored at a state small boat harbor;
 - (C) Requirements governing:
 - (i) The transfer of any state commercial, mooring, launching, or any other type of use or other permit, directly or indirectly, including but not limited to the imposition or assessment of a business transfer fee upon transfer of ownership of vessels operating commercially from, within or in any way related to the state small boat harbors; and
 - (ii) The use of state small boat harbors, launching ramps, or other boating facilities belonging to or controlled by the State, including but not limited to the establishment of minimum amounts of annual gross receipts required to renew a commercial use permit, and conditions under which a state commercial, mooring, launching, or any other type of use or other permit may be terminated, canceled, or forfeited; and
 - (D) Any other rule necessary to implement this chapter pertaining to small boat harbors, launching ramps, and other boating facilities belonging to or controlled by the State;

- (7) To continue the ocean recreational and coastal areas programs and govern the ocean waters and navigable streams of the State, and beaches encumbered with easements in favor of the public to protect and foster public peace and tranquility and to promote public safety, health, and welfare in or on the ocean waters and navigable streams of the State, and on beaches encumbered with easements in favor of the public, including:
- (A) Regulating the anchoring and mooring of vessels, houseboats, and other contrivances outside of any harbor or boating facility, including:
 - (i) The designation of offshore mooring areas;
 - (ii) The licensing and registration of vessels, houseboats, and other contrivances; and the issuance of permits for offshore anchoring and mooring of vessels, houseboats, and other contrivances; and
 - (iii) The living aboard on vessels, houseboats, or other contrivances while they are anchored or moored within ocean waters or navigable streams of the State.

The rules shall provide for consideration of environmental impacts on the State's aquatic resources in the issuance of any permits for offshore mooring;
 - (B) Safety measures, requirements, and practices in or on the ocean waters and navigable streams of the State;
 - (C) The licensing and registration of persons or organizations engaged in commercial activities in or on the ocean waters and navigable streams of the State;
 - (D) The licensing and registration of equipment utilized for commercial activities in or on the ocean waters and navigable streams of the State;
 - (E) For beaches encumbered with easements in favor of the public, the prohibition or denial of the following uses and activities:
 - (i) Commercial activities;
 - (ii) The storage, parking, and display of any personal property;
 - (iii) The placement of structures or obstructions;
 - (iv) The beaching, landing, mooring, or anchoring of any vessels; and
 - (v) Other uses or activities that may interfere with the public use and enjoyment of these beaches; and
 - (F) Any other matter relating to the safety, health, and welfare of the general public;
- (8) To regulate the examination, guidance, and control of harbor agents and their assistants; and
- (9) To regulate commercial activities in state waters including operations originating from private marinas; provided that no new or additional permits shall be required for those commercial activities regulated by any other chapter.

For the purposes of this paragraph:

“Commercial activity” means to engage in any action or attempt to engage in any action for compensation in any form. The action or actions may include providing or attempting to provide, advertising, or offering or attempting to offer guide services, charters, tours, and transportation to and from the location or locations for which such services are provided.

ACT 227

“Compensation” means money, barter, trade, credit, and other instruments of value, goods, and other forms of payment.”

SECTION 4. New statutory material is underscored.¹

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

(Approved July 8, 2024.)

Note

1. Edited pursuant to HRS §23G-16.5.