

JAN 27 2010

S.B. NO. 2945

A BILL FOR AN ACT

RELATING TO AGRICULTURE.

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

1 SECTION 1. Section 150A-5, Hawaii Revised Statutes, is
2 amended to read as follows:
3 "§150A-5 Conditions of importation[-] or interisland
4 movement. The importation into the State or movement from one
5 island within the State to another island therein of any of the
6 following articles, viz., nursery-stock, tree, shrub, herb,
7 vine, cut-flower, cutting, graft, scion, bud, seed, leaf, root,
8 or rhizome; nut, fruit, or vegetable; grain, cereal, or legume
9 in the natural or raw state; moss, hay, straw, dry-grass, or
10 other forage; unmanufactured log, limb, or timber, or any other
11 plant-growth or plant-product, unprocessed or in the raw state;
12 soil; microorganisms; live bird, reptile, nematode, insect, or
13 any other animal in any stage of development (that is in
14 addition to the so-called domestic animal, the quarantine of
15 which is provided for in chapter 142); box, vehicle, baggage, or
16 any other container in which such articles have been transported
17 or any packing material used in connection therewith, or any
18 nonagricultural article capable of harboring pests, including



1 but not limited to, rocks, building materials, or furniture,
2 shall be made in the manner hereinafter set forth:

3 (1) Notification of arrival. [~~Any~~] Except as provided in
4 paragraph (2), any person who receives for transport
5 or brings or causes to be brought to the State or
6 transports between islands, as freight, air freight,
7 baggage, or otherwise, for the purpose of debarkation
8 or entry therein, or as ship's stores, any of the
9 foregoing articles, shall, [~~immediately upon the~~
10 arrival thereof,] no less than twenty-four hours prior
11 to arrival thereof for an overseas or foreign marine
12 vessel, or no less than four hours prior to arrival
13 thereof for an overseas or foreign aircraft, or upon
14 arrival of an interisland marine vessel or interisland
15 aircraft notify the department, in writing, of the
16 arrival, giving the waybill number, container number,
17 name and address of the consignor, name and address of
18 the consignee or the consignee's agent in the State,
19 marks, number of packages, description of contents of
20 each package, country, state, or territory and
21 locality therein of the contents' origin, port at
22 which laden, and any other information that may be



1 necessary to locate or identify the same, and shall
2 hold such articles at the pier, airport, or any other
3 place where they are first received or discharged, in
4 such a manner that they will not spread or be likely
5 to spread any infestation or infection of insects or
6 diseases that may be present until inspection and
7 examination can be made by the inspector to determine
8 whether or not any article, or any portion thereof, is
9 infested or infected with or contains any pest. [The
10 ~~department may adopt rules to require identification~~
11 ~~of specific articles on negotiable and non-negotiable~~
12 ~~warehouse receipts, bills of lading, or other~~
13 ~~documents of title for inspection of pests. In~~
14 ~~addition, the department shall adopt rules to~~
15 ~~designate restricted articles that shall require:~~
16 ~~(A) A permit from the department in advance of~~
17 ~~importation; or~~
18 ~~(B) A department letter of authorization or~~
19 ~~registration in advance of importation.]~~

20 A department inspector may order the quarantine of, or
21 hold for examination any freight, air freight, or
22 baggage, transported for the purpose of debarkation or



1 entry, or as ship's stores, when any person fails to
2 comply with any of the notification requirements of
3 this paragraph. In addition, the department shall
4 adopt rules to designate restricted articles that
5 shall require a permit from the department in advance
6 of importation and shall designate other articles that
7 shall require a department letter of authorization or
8 registration in advance of importation. The
9 restricted articles shall include but not be limited
10 to certain microorganisms or living insects. Failure
11 to obtain the permit, letter of authorization, or
12 registration in advance is a violation of this
13 section;

14 (2) Individual passengers, officers, and crew.

15 (A) It shall be the responsibility of the
16 transportation company to distribute, prior to
17 the debarkation of passengers and baggage, the
18 State of Hawaii plant and animal declaration form
19 to each passenger, officer, and crew member of
20 any aircraft or vessel originating in the
21 continental United States or its possessions or
22 from any other area not under the jurisdiction of



1 the appropriate federal agency in order that the
2 passenger, officer, or crew member can comply
3 with the directions and requirements appearing
4 thereon. All passengers, officers, and crew
5 members, whether or not they are bringing or
6 causing to be brought for entry into the State
7 the articles listed on the form, shall complete
8 the declaration, except that one adult member of
9 a family may complete the declaration for other
10 family members. Any person who defaces the
11 declaration form required under this section,
12 gives false information, fails to declare
13 restricted articles in the person's possession or
14 baggage, or fails to declare in cargo manifests
15 is in violation of this section;

16 (B) Completed forms shall be collected by the
17 transportation company and be delivered,
18 immediately upon arrival, to the inspector at the
19 first airport or seaport of arrival. Failure to
20 distribute or collect declaration forms or to
21 immediately deliver completed forms is a
22 violation of this section; and



1 (C) It shall be the responsibility of the officers
2 and crew of an aircraft or vessel originating in
3 the continental United States or its possessions
4 or from any other area not under the jurisdiction
5 of the appropriate federal agency to immediately
6 report all sightings of any plants and animals to
7 the plant quarantine branch. Failure to comply
8 with this requirement is a violation of this
9 section;

10 (3) Plant and animal declaration form. The form shall
11 include directions for declaring domestic and other
12 animals cited in chapter 142, in addition to the
13 articles enumerated in this chapter;

14 (4) Labels. Each container in which any of the above-
15 mentioned articles are imported into the State shall
16 be plainly and legibly marked, in a conspicuous manner
17 and place, with the name and address of the shipper or
18 owner forwarding or shipping the same, the name or
19 mark of the person to whom the same is forwarded or
20 shipped or the person's agent, the name of the
21 country, state, or territory and locality therein
22 where the product was grown or produced [7] or where



1 the nonagricultural article was manufactured or
2 originated, and a statement of the contents of the
3 container. Upon failure to comply with this
4 paragraph, the importer or carrier [~~is~~] shall be in
5 violation of this section;

6 (5) Authority to inspect. Whenever the inspector has good
7 cause to believe that the provisions of this chapter
8 are being violated, the inspector may:

9 (A) Enter and inspect any aircraft, vessel, or other
10 carrier at any time after its arrival within the
11 boundaries of the State, whether offshore, at the
12 pier, or at the airport, for the purpose of
13 determining whether any of the articles or pests
14 enumerated in this chapter or rules adopted
15 thereto, is present;

16 (B) Enter into or upon any pier, warehouse, airport,
17 or any other place in the State where any of the
18 above-mentioned articles are moved or stored, for
19 the purpose of ascertaining, by inspection and
20 examination, whether or not any of the articles
21 is infested or infected with any pest or disease

1 or contaminated with soil or contains prohibited
2 plants or animals; and

3 (C) Inspect any baggage or personal effects of
4 disembarking passengers, officers, and crew
5 members on aircraft or vessels arriving in the
6 State to ascertain if they contain any of the
7 articles or pests enumerated in this chapter. No
8 baggage or other personal effects of the
9 passengers or crew members shall be released
10 until the baggage or effects have been passed.

11 Baggage or cargo inspection shall be made at the
12 discretion of the inspector, on the pier, vessel, or
13 aircraft or in any quarantine or inspection area.

14 Whenever the inspector has good cause to believe
15 that the provisions of this chapter are being
16 violated, the inspector may require that any box,
17 package, suitcase, or any other container carried as
18 ship's stores, cargo, or otherwise by any vessel or
19 aircraft moving between the continental United States
20 and Hawaii or between the Hawaiian Islands, be opened
21 for inspection to determine whether any article
22 prohibited or restricted by or any pest prohibited by



1 this chapter or by rules adopted pursuant thereto is
2 present. It is a violation of this section if any
3 prohibited article or any restricted article without a
4 permit, or any pest or any plant, fruit, or vegetable
5 infested with plant pests is found;

6 (6) Request for importation and inspection. In addition
7 to requirements of the United States customs
8 authorities concerning invoices or other formalities
9 incident to importations into the State, the importer
10 shall be required to file a written statement with the
11 department, signed by the importer or the importer's
12 agent, setting forth the importer's desire to import
13 certain of the above-mentioned articles into the State
14 and:

15 (A) Giving the following additional information:

16 (i) The kind (scientific name), if applicable,
17 quantity, and description;

18 (ii) The country, state, or territory and
19 locality therein where same were grown or
20 produced[+] or where the nonagricultural
21 article was manufactured or originated;



- 1 (iii) Certification that all animals to be
- 2 imported are the progeny of captive
- 3 populations or have been held in captivity
- 4 for a period of one year immediately prior
- 5 to importation or have been specifically
- 6 approved for importation by the board;
- 7 (iv) The port from which the same were last
- 8 shipped;
- 9 (v) The name of the shipper; and
- 10 (vi) The name of the consignee; and
- 11 (B) Containing:
- 12 (i) A request that the department, by its duly
- 13 authorized agent, examine the articles
- 14 described;
- 15 (ii) An agreement by the importer to be
- 16 responsible for all costs, charges, or
- 17 expenses; and
- 18 (iii) A waiver of all claims for damages incident
- 19 to the inspection or the fumigation,
- 20 disinfection, quarantine, or destruction of
- 21 the articles, or any of them, as hereinafter



1 provided, if any treatment is deemed
2 necessary.

3 Failure or refusal to file a statement, including
4 the agreement and waiver, is a violation of this
5 section and may, in the discretion of the department,
6 be sufficient cause for refusing to permit the entry
7 of the articles into the State;

8 (7) Place of inspection. If, in the judgment of the
9 inspector, it is deemed necessary or advisable to move
10 any of the above-mentioned articles, or any portion
11 thereof, to a place more suitable for inspection than
12 the pier, airport, or any other place where they are
13 first received or discharged, the inspector is
14 authorized to do so. All costs and expenses incident
15 to the movement and transportation of the articles to
16 such place shall be borne by the importer or the
17 importer's agent. If the importer, importer's agent,
18 or transportation company requests inspection of
19 sealed containers of the above-mentioned articles at
20 locations other than where the articles are first
21 received or discharged and the department determines
22 that inspection at such place is appropriate, the



1 department may require payment of costs necessitated
2 by these inspections, including overtime costs;

3 (8) Disinfection or quarantine. If, upon inspection, any
4 article received or brought into the State for the
5 purpose of debarkation or entry therein is found to be
6 infested or infected or there is reasonable cause to
7 presume that it is infested or infected and the
8 infestation or infection can, in the judgment of the
9 inspector, be eradicated, a treatment shall be given
10 such article. The treatment shall be at the expense
11 of the owner or the owner's agent, and the treatment
12 shall be as prescribed by the department. The article
13 shall be held in quarantine at the expense of the
14 owner or the owner's agent at a satisfactory place
15 approved by the department for a sufficient length of
16 time to determine that eradication has been
17 accomplished. If the infestation or infection is of
18 such nature or extent that it cannot be effectively
19 and completely eradicated, or if it is a potentially
20 destructive pest or it is not widespread in the State,
21 or after treatment it is determined that the
22 infestation or infection is not completely eradicated,



1 or if the owner or the owner's agent refuses to allow
2 the article to be treated or to be responsible for the
3 cost of treatment and quarantine, the article, or any
4 portion thereof, together with all packing and
5 containers, may, at the discretion of the inspector,
6 be destroyed or sent out of the State at the expense
7 of the owner or the owner's agent. Such destruction
8 or exclusion shall not be made the basis of a claim
9 against the department or the inspector for damage or
10 loss incurred;

11 (9) Disposition. Upon completion of inspection, either at
12 the time of arrival or at any time thereafter should
13 any article be held for inspection, treatment, or
14 quarantine, the inspector shall affix to the article
15 or the container or to the delivery order in a
16 conspicuous place thereon, a tag, label, or stamp to
17 indicate that the article has been inspected and
18 passed. This action shall constitute a permit to
19 bring the article into the State; and

20 (10) Ports of entry. None of the articles mentioned in
21 this section shall be allowed entry into the State



1 except through the airports and seaports in the State
2 designated and approved by the board."

3 SECTION 2. Section 150A-14, Hawaii Revised Statutes, is
4 amended by amending subsection (b) to read as follows:

5 "(b) Any person who violates section 150A-5 shall be
6 guilty of a misdemeanor and fined not less than [~~\$100 and not~~
7 ~~more than \$10,000.] \$1,000.~~ The provisions of section 706-640
8 notwithstanding, the maximum fine shall be \$10,000. For a
9 second violation committed within five years of a prior
10 violation, the person may be fined not less than [~~\$500] \$5,000~~
11 and not more than \$25,000."

12 SECTION 3. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 4. This Act shall take effect on July 1, 2010.

15

INTRODUCED BY: *Russell Kohl*

Jill

Report Title:

Agriculture; Interisland Movement; Freight; Fine

Description:

Establishes restrictions on the interisland movement of certain agricultural and nonagricultural articles; amends requirements related to the notification of arrival, labeling, authority to inspect, and importation of certain agricultural and nonagricultural articles; establishes a misdemeanor offense and increases the fine applicable to violators.

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

