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## A BILL FOR AN ACT

RELATING TO BIRDS.

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

1           SECTION 1. The legislature finds that, for more than a  
2 decade, residents of certain areas of the State have suffered  
3 the effects of excessive feeding of feral birds. These  
4 residents have reported bird fecal matter covering cars, roofs,  
5 walkways, and solar panels. After a light rain and direct sun,  
6 the odor is unbearable. After the bird fecal matter dries, it  
7 blows in the wind, exacerbates breathing problems, and triggers  
8 allergies. Residents who have suffered chronic runny noses,  
9 watery eyes, sneezing, and fungal and bacterial infections have  
10 seen these symptoms disappear after moving away. Voluminous  
11 bird droppings have also decreased property values by corroding  
12 home surfaces and making affected communities unpleasant places  
13 in which to live.

14           The legislature further finds that feeding feral birds  
15 dramatically increases non-native bird populations, which in  
16 turn interferes with native wildlife. Feral birds serve as  
17 reservoirs of infection for avian diseases such as avian pox and



1 avian malaria, as well as numerous species of parasites such as  
2 lice and mites.

3 Act 269, Session Laws of Hawaii 2013, was enacted to  
4 provide a remedy for individuals harmed by the excessive feeding  
5 of feral birds by declaring the odors and filth resulting from  
6 feeding feral birds to be a nuisance. However, the department  
7 of health has declined to take action pursuant to section 322-1,  
8 Hawaii Revised Statutes, against individuals who feed feral  
9 birds because, in the department's opinion, the odor and filth  
10 resulting from the excessive feeding of feral birds do not rise  
11 to the applicable statutory level of being dangerous or  
12 injurious to health.

13 The legislature further finds that the State's failure to  
14 act to resolve this issue has caused many residents to consider  
15 exterminating feral birds on their property as a remedy.

16 The purpose of this Act is to require the department of  
17 health to enforce a prohibition on the feeding of an excessive  
18 number of feral birds without the need to first determine that  
19 odors and filth from bird waste are a nuisance.



1 SECTION 2. Chapter 322, Hawaii Revised Statutes, is  
2 amended by adding a new section to part I to be appropriately  
3 designated and to read as follows:

4 "§322- Feeding of excessive number of feral birds;  
5 prohibited. (a) No person shall feed, or permit or allow the  
6 placement or discarding of food or food by-products, in a manner  
7 that a reasonable person would expect to result in the  
8 lingering, roosting, or congregating of twenty-five or more  
9 feral birds within a twenty-foot radius.

10 (b) This section shall not apply to the feeding of:

11 (1) Any carrier pigeon, racing pigeon, or show pigeon in  
12 the possession of a person who has been issued a valid  
13 pigeon ownership permit pursuant to section 142-102;

14 (2) Any migratory bird in compliance with a migratory bird  
15 permit issued pursuant to title 50 Code of Federal  
16 Regulations part 21, as amended;

17 (3) Any bird that is primarily kept in a cage or other  
18 enclosed container or structure and is thereby  
19 prevented from flying away;

20 (4) Any food or bait products used by a pest control  
21 operator licensed under chapter 460J;



1       (5) Poultry at a farming operation in a manner consistent  
2       with generally accepted agricultural and management  
3       practices; and

4       (6) Any bird used by any federal, state, or county  
5       employee, their agent, cooperator, or permittee,  
6       engaged or aiding in the discharge of an official  
7       duty.

8       (c) Prima facie evidence of a violation of subsection (a)  
9       or of a cease and desist order issued under section 322-2 or  
10      322-3 shall include:

11      (1) A certificate, sworn to or affirmed by an individual  
12      authorized to enforce this section, based upon  
13      inspection of the premises and witnessing a violation;

14      or

15      (2) A photograph or video recording evidencing a violation  
16      that was gathered or received by an individual  
17      authorized to enforce this section.

18      (d) For purposes of this section:

19      "Carrier pigeon" shall have the same meaning as in section  
20      142-101.



1       "Feral bird" means any bird having escaped or been released  
2 from domestication and reverted to a wild state over several  
3 generations.

4       "Poultry" shall have the same meaning as in section 161-3.

5       "Racing pigeon" shall have the same meaning as in section  
6 142-101.

7       "Show pigeon" shall have the same meaning as in section  
8 142-101."

9       SECTION 3. Section 322-1, Hawaii Revised Statutes, is  
10 amended to read as follows:

11       "**§322-1 Removal, prevention.** The department of health and  
12 its agents shall examine [~~into~~] all nuisances, foul or noxious  
13 odors, gases or vapors, water in which mosquito larvae exist,  
14 sources of filth, and all causes of sickness or disease, on  
15 shore, and in any vessel, which may be known to them or brought  
16 to their attention, which in their opinion are dangerous or  
17 injurious to health, and [~~into~~] any and all conditions created  
18 or existing which cause or tend to cause sickness or disease or  
19 to be dangerous or injurious to health, and shall cause the same  
20 to be abated, destroyed, removed, or prevented.

21       For purposes of this part, a nuisance shall include[÷



1       ~~(1) Toxic~~ toxic materials that are used in or by-products  
2           of the manufacture or conversion of methamphetamine,  
3           and clandestine drug labs that manufacture  
4           methamphetamine ~~[; and~~  
5       ~~(2) Odors and filth resulting from a person feeding feral~~  
6           ~~birds]."~~

7           SECTION 4. Section 322-2, Hawaii Revised Statutes, is  
8   amended to read as follows:

9           "**§322-2 Ordering owner to remove.** Whenever any [~~such~~]  
10   nuisance, foul or noxious odors, gases or vapors, water in which  
11   mosquito larvae exist, source of filth, or cause of sickness or  
12   disease is found on private property, the department of health  
13   shall cause notice to be given to the owner to remove and abate  
14   the same at the owner's own expense within such reasonable time  
15   as the department may deem proper. Whenever any violation of  
16   section 322-       is found on private property, the department of  
17   health shall cause notice to be given to the owner to cease any  
18   further violation of section 322-       . A duplicate of the notice  
19   so given shall be left with one or more of the tenants or  
20   occupants of the premises. If the premises are unoccupied,  
21   notice shall be mailed to the last known place of residence of



1 the owner if residing in the State. If the owner resides out of  
2 the State or cannot be reached with notice speedily, notice left  
3 at the house or posted on the premises shall be sufficient. If  
4 the owner thus notified does not comply with the notification or  
5 order of the department, or its agent, within the time  
6 specified, the department or its agent may apply to the district  
7 court of the circuit in which the property is situated for an  
8 order authorizing the department to execute and carry out the  
9 notice or for an order to abate the nuisance and remove,  
10 destroy, or prevent the cause of the foul or noxious odors,  
11 gases or vapors, water in which mosquito larvae exist, source of  
12 filth, or cause of sickness or disease, or other thing  
13 detrimental to public health[-], or to prevent the further  
14 violation of section 322- .

15 The department may recover by appropriate proceedings the  
16 expenses incurred by it in the abatement, removal, destruction,  
17 or prevention, from any person who has caused or allowed the  
18 nuisances, source of foul or noxious odors, gases or vapors,  
19 water in which mosquito larvae exist, source of filth, or cause  
20 of sickness or disease, or other thing detrimental to the public  
21 health, or violation of section 322- , and from any owner,



1 tenant, or occupant of the premises, who, after notice, has  
 2 failed to abate, remove, destroy, or prevent the nuisance,  
 3 source of foul or noxious odors, gases or vapors, water in which  
 4 mosquito larvae exist, source of filth, or cause of sickness or  
 5 disease, or other thing detrimental to the public health within  
 6 the time specified in the notice~~[r]~~, or has failed to cease  
 7 further violation of section 322- . In no case shall the  
 8 department or any officer or agent thereof be liable for costs  
 9 in any action or proceeding that may be commenced [~~in pursuance~~  
 10 ~~of~~] pursuant to this part."

11 SECTION 5. Section 322-3, Hawaii Revised Statutes, is  
 12 amended to read as follows:

13 "**§322-3 Nuisance on public property.** Whenever any  
 14 nuisance, foul or noxious odors, gases or vapors, water in which  
 15 mosquito larvae exist, source of filth, or cause of sickness or  
 16 disease, or other thing detrimental to the public health, or  
 17 violation of section 322- is found on public property or on a  
 18 public highway, street, lane, alley, or other public place,  
 19 notice shall be given by the department of health, or its agent,  
 20 to the person officially in charge thereof, and the person shall  
 21 be notified to abate, destroy, remove, [~~or~~] prevent, or cease



1 the same. In case of failure to comply with the notice, the  
2 mode of procedure shall be the same as [~~hereinbefore~~] provided  
3 in case of private persons in section 322-2."

4 SECTION 6. Section 322-4, Hawaii Revised Statutes, is  
5 amended to read as follows:

6 "**§322-4 Entering lands, buildings, etc.** Whenever any  
7 member of the department of health deems it necessary for the  
8 preservation of the lives or health of the public to enter any  
9 land, building, vessel, or aircraft for the purpose of examining  
10 [~~into~~], abating, destroying, removing, or preventing any  
11 nuisance, source of foul or noxious odors, gases or vapors,  
12 water in which mosquito larvae exist, source of filth, or cause  
13 of sickness or disease, or other thing detrimental to the public  
14 health, or to enforce section 322- , and is refused such  
15 entry, the member may make complaint to the district judge in  
16 whose circuit the nuisance, source, place, or cause is, and the  
17 district judge may thereupon issue a warrant, directed to any  
18 police officer of the circuit, commanding the police officer to  
19 take sufficient aid, and, being accompanied by the member of the  
20 department, between the hours of sunrise and sunset, to [~~repair~~]  
21 go to the place described in the complaint, and [~~to~~] abate,



1 destroy, remove, or prevent, under the directions of the member,  
2 the nuisance, source, ~~[or]~~ cause~~[-]~~, or violation."

3 SECTION 7. Section 322-6, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "~~§322-6~~ **Who to report nuisances~~[-]~~ and violations.** The  
6 sheriff, all police officers ~~[of police]~~, and physicians shall  
7 report to the department of health, or its nearest authorized  
8 agent, the existence of any nuisance injurious to the public  
9 health~~[-]~~ or any violation of section 322-\_\_\_, of which any of  
10 them may be cognizant, as soon as possible after it comes to  
11 their knowledge. Any individual may report to the department of  
12 health, or its nearest authorized agent, the existence of any  
13 nuisance injurious to the public health or violation of section  
14 322-\_\_\_ as soon as possible after the individual learns of the  
15 existence of the nuisance~~[-]~~ or violation."

16 SECTION 8. Section 322-8, Hawaii Revised Statutes, is  
17 amended by amending subsection (a) to read as follows:

18 "(a) Any person who violates this part or any rule adopted  
19 by the department of health to implement this part shall be  
20 fined not more than \$10,000 for each separate offense~~[-]~~;



1 provided that the minimum fines for violation of section 322-  
2 shall be as follows:

- 3       (1) For a second violation within five years of a previous  
4       violation, a fine of not less than \$250;  
5       (2) For a third violation within five years of the last  
6       violation, a fine of not less than \$500;  
7       (3) For a fourth violation within five years of the last  
8       violation, a fine of not less than \$1,000;  
9       (4) For a fifth violation within five years of the last  
10       violation, a fine of not less than \$2,500;  
11       (5) For a sixth violation within five years of the last  
12       violation, a fine of not less than \$5,000; and  
13       (6) For a seventh or subsequent violation within five  
14       years of the last violation, a fine of \$9,999.

15 Any action taken to collect the penalty provided for in this  
16 subsection shall be considered a civil action."

17       SECTION 9. This Act does not affect rights and duties that  
18 matured, penalties that were incurred, and proceedings that were  
19 begun before its effective date.

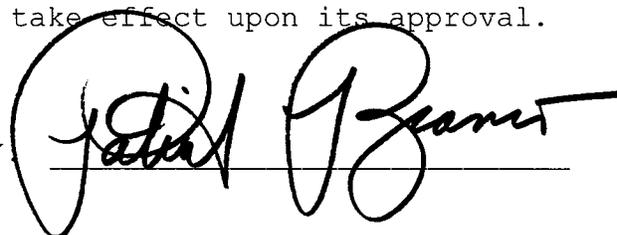
20       SECTION 10. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.



1 SECTION 11. This Act shall take effect upon its approval.

2

INTRODUCED BY

A handwritten signature in black ink, appearing to read "J. Bean", is written over a horizontal line. The signature is stylized and cursive.

JAN 18 2022



# H.B. NO. 1514

**Report Title:**

Feral Birds; Feeding of Excessive Numbers; Prohibition;  
Penalties

**Description:**

Requires the department of health to enforce a prohibition on the feeding of excessive numbers of feral birds without the need to first determine that odors and filth from bird waste are a nuisance. Provides exceptions. Establishes penalties.

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

