
A BILL FOR AN ACT

RELATING TO INVASIVE SPECIES.

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

1 SECTION 1. The legislature finds that nursery stock and
2 associated materials can harbor and vector plant pests and
3 diseases. Unregulated production, shipping, and distribution of
4 nursery stock presents an unacceptable risk to the State's
5 agricultural, forestry, and horticultural interests, and to the
6 State's general environmental quality. Therefore, it is
7 necessary to ensure that nurseries produce healthy plants and
8 that nursery stock available for sale or shipped to other
9 nurseries, brokers, and out-of-state customers meet the national
10 nursery stock cleanliness standard.

11 Accordingly, the purpose of this Act is to create a nursery
12 licensing program to reduce the spread of pests and invasive
13 species due to movement of nursery stock.

14 SECTION 2. Chapter 150A, Hawaii Revised Statutes, is
15 amended by adding a new part to be appropriately designated and
16 to read as follows:

17 **"PART . NURSERY LICENSING PROGRAM**



1 **§150A-A Definitions.** For the purposes of this part:

2 "Best management practices" means processes and actions
3 based on the best available science that provide the most cost-
4 effective and efficacious way to address an issue, such as
5 preventing or reducing pest and pathogen problems.

6 "Effective control of other pests" means eliminating or
7 reducing the other pest to the point of an acceptable economic
8 and environmental risk.

9 "Nursery license" means a document issued pursuant to this
10 part authorizing a person to engage in a nursery or nursery
11 related business at a particular location under a specified
12 business name.

13 "Other pest" means a pest that is not a pest of concern and
14 that may be controlled so that the pest does not pose an
15 unacceptable economic or environmental risk.

16 "Person" means a person or government entity.

17 "Pest of concern" means a pest:

18 (1) That:

19 (A) Is not known to occur in the State;

20 (B) Has a limited distribution within the State; and



1 (C) The department or other government entity
2 attempts to contain, suppress, or reduce within
3 the State, including any pest or noxious weed
4 designated by the department; and

5 (2) Whose introduction causes or is likely to cause
6 economic or environmental harm or harm to human
7 health.

8 "Sale" or "sell" mean offering, exposing, or possessing for
9 sale, exchange, barter, or trade.

10 "Standards of nursery cleanliness" means, with respect to a
11 location where nursery stock is produced or sold:

12 (1) The implementation any method of treatment for any
13 pest of concern required by the department;

14 (2) The isolation of any nursery stock or other material
15 infested or infected with pests pending treatment or
16 disposal;

17 (3) Any action reasonably necessary to ensure the location
18 and all nursery stock produced or sold at the location
19 are free from pests; and

20 (4) Any other standard required by the department.



1 **§150A-B Nursery licenses; eligibility.** (a) No person
2 engaged in the sale of nursery stock may operate a nursery
3 without a valid nursery license issued by the department
4 pursuant to this part. A nursery license shall be required at
5 each location where a person sells or grows nursery stock.

6 (b) A person shall be eligible for a nursery license for
7 each location at which the person engages in the sale of nursery
8 stock if the person:

- 9 (1) Demonstrates good faith in seeking to carry on the
10 business of selling nursery stock;
- 11 (2) Does not stock or sell any plant species designated by
12 the department as a noxious weed or restricted plant;
- 13 (3) Ensures the location the person is free from pests of
14 concern;
- 15 (4) Maintains effective control of other pests at the
16 location;
- 17 (5) Implements standards of nursery cleanliness at the
18 location; and
- 19 (6) Implements any best management practices as required
20 by the department for the location.



1 (c) Application for a nursery location license, including
2 the payment of any fees, shall be made to the department in a
3 manner as determined by the department.

4 (d) Each nursery license be valid for one year and may be
5 renewed on an annual basis; provided that each person seeking a
6 renewal of an existing nursery license shall submit an
7 application for renewal and pay any fees as determined by the
8 department.

9 (e) The department may publish a list of persons that hold
10 a valid nursery license a webpage maintained by the department.

11 (f) This section shall not apply to persons who:

12 (1) Sell seeds and do not ship or sell any other nursery
13 stock; and

14 (2) A person who holds a temporary nursery license or
15 small seller license under section 150A-C.

16 **§150A-C Temporary nursery license; small seller license;**
17 **eligibility.** (a) A person may obtain a temporary nursery

18 license if the person:

19 (1) Is a non-profit, charitable, educational, or religious
20 organization;



- 1 (2) Sells nursery stock for days or less within a
2 calendar year;
- 3 (3) Makes \$ or less in total annual sales of
4 nursery stock;
- 5 (4) Uses the proceeds of the sale of nursery stock for
6 charitable, educational, or religious purposes;
- 7 (5) Produces or obtains all nursery stock from a person
8 with a valid nursery license;
- 9 (6) Utilizes best management practices for nursery stock
10 and the sale of nursery stock by temporary nursery
11 license holders as required by the department; and
- 12 (7) Pays any applicable fees as determined by the
13 department.
- 14 (b) A person is eligible for a small seller nursery
15 license if the person:
- 16 (1) Makes \$ or less in total annual sales of
17 nursery stock;
- 18 (2) Produces or obtains all nursery stock from a person
19 with a valid nursery license;



1 (3) Utilizes best management practices for nursery stock
2 and the sale of nursery stock by small seller nursery
3 license holders as required by the department; and

4 (4) Pays any applicable fees as determined by the
5 department.

6 (c) Each person applying for a temporary nursery license
7 or small seller nursery license shall submit an application in a
8 manner as determined by the department.

9 **§150A-D Inspection; quarantine.** (a) Upon receipt of an
10 application for a nursery license, temporary nursery license, or
11 small seller nursery license, the department shall inspect the
12 location, the nursery stock at the location, and any other area
13 used by the applicant to produce or store nursery stock to
14 determine that the location is:

15 (1) Free from pests of concern;

16 (2) Has effective control of all other pests;

17 (3) Has implement applicable standards of nursery
18 cleanliness; and

19 (4) Has implemented any best management practices as
20 required by the department.



1 The department may conduct additional inspections of any
2 location issued a nursery license, temporary nursery license, or
3 small seller nursery license with or without notice and at such
4 time and in such manner as the department determines
5 appropriate.

6 (b) The department shall not issue a license to any person
7 who refuses to permit an inspection of a location at which the
8 person engages in the sale of nursery stock.

9 (c) It shall be unlawful for any person to deny access or
10 offer resistance to an inspector or other agent of the
11 department conducting an inspection under this section or to
12 hinder any inspection conducted under this section by
13 misrepresenting or concealing facts or conditions.

14 (d) If the department determines pursuant to an inspection
15 authorized under this section or by any other means that a pest
16 of concern is present in nursery stock or at a location where
17 nursery stock is present, that other pests are not under
18 effective control at a location, or that the holder of a nursery
19 license, temporary nursery license, or a small seller nursery
20 license is otherwise not in compliance with the requirements of
21 this part, the department:



- 1 (1) Shall place a stop sale or quarantine order for the
2 affected nursery stock or location and, if
3 appropriate, a destruction order for affected nursery
4 stock;
- 5 (2) Shall notify the person applying for or holding the
6 nursery license, temporary nursery license, or a small
7 seller nursery license for the affected nursery stock
8 or location of the existence of the pest of concern,
9 other pest, or other compliance issue and advise the
10 person on acceptable mitigation methods; and
- 11 (3) May require the affected nursery stock or affected
12 material be mitigated by whatever means necessary,
13 including destruction, confiscation, treatment, return
14 shipment, or quarantine, at the expense of the nursery
15 or person without any form of compensation.
- 16 (e) During the period when an order under subsection (d)
17 is in effect for nursery stock or a location, it shall be
18 unlawful for any person to sell, ship, transport, give away, or
19 otherwise move, alter, or tamper with affected nursery stock or
20 material at the location, other than for activities to mitigate
21 the pest of concern or other pests.



1 **§150A-E Nursery license; denial; revocation.** The
2 department may refuse to issue or renew a nursery license, a
3 temporary nursery license, or a small seller nursery license or
4 may suspend or revoke a nursery license, temporary nursery
5 license, or a small seller nursery license for a location if the
6 department determines that the licensee or the applicant has
7 done any of the following:

- 8 (1) Has wilfully refused to comply with any laws and
9 regulations regarding nursery stock or any pest which
10 might be carried by nursery stock;
- 11 (2) Has intentionally committed fraud or deception in the
12 procurement of the nursery license;
- 13 (3) Has committed fraud or misrepresentation in the
14 handling or sale of nursery stock;
- 15 (4) Has failed to ensure the nursery stock or location is
16 free from pests of concern;
- 17 (5) Has failed to maintain effective control of all other
18 pests at the location or with respect to the nursery
19 stock;



1 (6) Has failed to maintain the nursery stock or location
2 in accordance with any best management practices
3 required by the department;

4 (7) Has failed to maintain nursery stock produced or sold
5 by the licensee or applicant in accordance with the
6 standards of nursery cleanliness; or

7 (8) Has failed to comply with any lawful order which is
8 issued by the department.

9 **§150A-F Fees.** (a) The department shall assess the
10 following criteria in regard to an application fee for a nursery
11 license, temporary nursery license, or small seller nursery
12 license:

13 (1) The quantity and dollar value of the applicant's
14 nursery stock sales;

15 (2) The acreage used by the applicant to produce, store,
16 or sell nursery stock; and

17 (3) Any other criteria the department deems appropriate.

18 (b) No portion of any fee paid pursuant to this part shall
19 be refunded to a person if the department revokes or denies an
20 application or an application for renewal for a license issued
21 under this part.



1 (c) All fees collected pursuant to this part shall be paid
2 to the department and deposited in the pest inspection,
3 quarantine, and eradication fund established under section 150A-
4 4.5.

5 **§150A-G Civil penalties.** (a) Any person who violates any
6 provision of this part or any rule adopted by the department
7 pursuant to this part shall be fined not more \$ for
8 each separate offense. Each date of violation shall constitute
9 a separate offense. Any action taken to impose or collect the
10 penalty provided for in this subsection shall be considered a
11 civil action.

12 (b) All fines collected under this section shall be paid
13 to the department and deposited into the pest inspection,
14 quarantine, and eradication fund under section 150A-4.5.

15 **§150A-H Rulemaking.** The department shall adopt rules in
16 accordance with chapter 91 to implement this part."

17 SECTION 3. Section 150A-2, Hawaii Revised Statutes, is
18 amended by adding a new definition to be appropriately inserted
19 and to read as follows:

20 "Nursery stock" means any plant for planting, propagation,
21 or ornamentation, including all plants, trees, shrubs, vines,



1 perennials, grafts, cuttings, and buds that may be sold for
2 propagation, whether cultivated or wild, and all viable parts of
3 these plants."

4 SECTION 4. Section 150A-23, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "**§150A-23 Nursery stock certificate.** The department may
7 issue and authorize the use of nursery stock certificates by any
8 shipper complying with its regulation for nursery inspection.
9 Shipments accompanied by these certificates may move to other
10 localities within the county or to other counties without
11 inspection at destination. Nursery stock certificates may be
12 issued for interstate shipments. Fees may be charged for
13 nursery certification and shall be deposited into the pest
14 inspection, quarantine, and eradication fund. Nursery stock
15 certificates shall not be altered or misused. No nursery stock
16 certificate shall be issued to a person who does not have a
17 nursery license and is required to obtain a nursery license
18 under part _____ of this chapter.

19 The department may revoke or suspend the right to use any
20 nursery stock certificate which is issued to any person who
21 fails to comply with requirements for use of the certificate."



1 SECTION 5. Section 150A-53, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§150A-53 General actions to achieve objectives. (a) To
4 achieve the objectives of the biosecurity program, the
5 department shall plan for and, within available legislative
6 appropriations or through funding from other sources, implement
7 the following:

8 (1) Work with government agencies and agricultural
9 commodity exporters of other states and countries to
10 establish pre-entry inspection programs under which
11 inbound cargo into the State is inspected at the ports
12 of departure or other points outside the State;

13 (2) Establish, operate, or participate in operating port-
14 of-entry facilities where multiple government agencies
15 may inspect, quarantine, fumigate, disinfect, destroy,
16 or exclude as appropriate, articles that may harbor
17 pests or exclude articles that are prohibited or
18 restricted without a permit, with the goals of:

19 (A) Performing inspections in an efficient,
20 effective, and expeditious manner for the



1 government agencies involved and for cargo
2 owners, carriers, and importers; and
3 (B) Providing for the proper and safe storage and
4 handling of cargo, especially agricultural and
5 food commodities, awaiting inspection;
6 (3) Develop, implement, and coordinate post-entry measures
7 to eradicate, control, reduce, and suppress pests and,
8 as appropriate, eradicate or seize and dispose of
9 prohibited or restricted organisms without a permit
10 that have entered the State;
11 (4) Collaborate with relevant government agencies,
12 agricultural commodity importers, and other persons to
13 examine and develop joint integrated systems to better
14 implement the biosecurity program;
15 (5) Improve cargo inspection capabilities and methods,
16 including enhancement of the content and submission
17 requirements for cargo manifests and agricultural
18 commodity ownership and movement certificates;
19 (6) Promote the production of agricultural commodities in
20 the State to reduce cargo shipments of imported
21 commodities into the State; and



1 (7) Provide public education on the negative effects of
2 pests and prohibited or restricted organisms without a
3 permit, to the environment and economy of the State.

4 (b) The department shall establish parameters and
5 construction requirements for biosecurity facilities that
6 provide for and ensure the safety of agricultural and food
7 commodities consumed by Hawaii residents, including cold storage
8 facilities established by private-public partnerships to
9 preserve the quality and ensure the safety of the commodities
10 arriving at the State's airports and harbors.

11 (c) The nursery licensing program established pursuant to
12 part of this chapter shall be considered a part of the
13 biosecurity program and may be carried out using the authority
14 of, and funds available to, the biosecurity program."

15 SECTION 6. New statutory material is underscored.

16 SECTION 7. This Act shall take effect on July 1, 2024.

17

INTRODUCED BY: NAB

JAN 19 2024



H.B. NO. 2025

Report Title:

Nursery License; Establishment; Invasive Species; Control

Description:

Establishes the nursery license program for the regulation of the sale and movement of nursery stock.

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