
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 invasive species are
2 the single greatest threat to the State's economy and natural
3 environment, including native species, and to the health and
4 lifestyle of Hawaii's people. The impacts of invasive species
5 in the State have been severe, causing serious habitat
6 degradation, extinction of native species, increased wildfire
7 risk, increases in the cost of agriculture and livestock
8 production, and many other negative and expensive consequences.
9 Preventing pests from entering the State, or, if that fails,
10 taking steps to prevent a pest from spreading within the State,
11 are two critical measures that can protect Hawaii from the
12 negative impacts of invasive species.

13 The legislature, like the federal government, recognizes
14 the value of preventing the movement of invasive pests. Federal
15 law allows the United States Department of Agriculture to
16 conduct pre-departure inspections of all passengers, baggage,
17 cargo, and any other articles moving from the State to other



1 areas of the continental United States to protect against the
2 spread of pests from Hawaii. However, the federal government
3 does not provide any similar inspections for passengers or
4 material arriving in the State from other parts of the
5 continental United States.

6 The legislature recognizes that existing law does not
7 expressly authorize the Hawaii department of agriculture to
8 inspect non-agricultural commodities arriving in the State from
9 other parts of the United States, posing a serious gap that can
10 allow invasive species like the red imported fire ant and
11 wood-boring beetles to enter the State with other imports. For
12 example, once invasive pests such as the red imported fire ant
13 are present in the State, the department of agriculture will
14 require the authority to impose a quarantine and prevent the
15 movement of certain items to mitigate the spread of the pest.

16 The legislature notes that other states have and regularly
17 exercise the authority to quarantine areas, including
18 restricting the movement, possession, and sale of commodities
19 infested with a high impact pest, and may also quarantine any
20 other products, articles, or means of conveyance of a high
21 impact pest.



1 Accordingly, the purpose of this Act is to expand the
2 department of agriculture's authority to conduct certain
3 investigations and clarify certain penalties to prevent the
4 spread of invasive species in the State.

5 SECTION 2. Section 150A-2, Hawaii Revised Statutes, is
6 amended by adding a new definition to be appropriately inserted
7 and to read as follows:

8 "Person" means an individual, corporation, firm,
9 association, society, community, assembly, inhabitant of a
10 district or neighborhood, or person known or unknown, and the
11 public generally. "Person" includes a government and any of its
12 agencies, instrumentalities, or subdivisions."

13 SECTION 3. Section 150A-5, Hawaii Revised Statutes, is
14 amended to read as follows:

15 **"§150A-5 Conditions of importation. (a) The importation**
16 of any material that is infested or infected with an insect or
17 other animal, disease, or pest, or that is itself a pest, is
18 prohibited unless appropriate authorization is obtained from the
19 department before importation.

20 (b) The importation into the State of any of the following
21 articles, viz., nursery-stock, tree, shrub, herb, vine,



1 cut-flower, cutting, graft, scion, bud, seed, leaf, root, or
2 rhizome; nut, fruit, or vegetable; grain, cereal, or legume in
3 the natural or raw state; moss, hay, straw, dry-grass, or other
4 forage; unmanufactured log, limb, or timber, or any other
5 plant-growth or plant-product, unprocessed or in the raw state;
6 soil[+], including potting soil, growing mix, and mulch;
7 microorganisms; live bird, reptile, nematode, insect, or any
8 other animal in any stage of development (that is in addition to
9 the so-called domestic animal, the quarantine of which is
10 provided for in chapter 142); box, vehicle, baggage, or any
11 other container in which the articles have been transported or
12 any packing material used in connection therewith shall be made
13 in the manner hereinafter set forth:

14 (1) Notification of arrival. Any person who receives for
15 transport or brings or causes to be brought to the
16 State as freight, air freight, baggage, or otherwise,
17 for the purpose of debarkation or entry therein, or as
18 ship's stores, any of the foregoing articles, shall,
19 immediately upon the arrival thereof, notify the
20 department, in writing, of the arrival, giving the
21 waybill number, container number, name and address of



1 the consignor, name and address of the consignee or
2 the consignee's agent in the State, marks, number of
3 packages, description of contents of each package,
4 port at which laden, and any other information that
5 may be necessary to locate or identify the same, and
6 shall hold the articles at the pier, airport, or any
7 other place where they are first received or
8 discharged, in a manner that they will not spread or
9 be likely to spread any infestation or infection of a
10 pest, including insects or diseases that may be
11 present, until inspection and examination can be made
12 by the inspector to determine whether [~~or not~~] any
13 article, or any portion thereof, is infested or
14 infected with or contains any pest. The department
15 may adopt rules to require identification of specific
16 articles on negotiable and non-negotiable warehouse
17 receipts, bills of lading, or other documents of title
18 for inspection of pests. In addition, the department
19 shall adopt rules to designate restricted articles
20 that shall require:



1 (A) A permit from the department in advance of
2 importation; or

3 (B) A department letter of authorization or
4 registration in advance of importation.

5 The restricted articles shall include but not be
6 limited to certain microorganisms or living insects.

7 Failure to obtain the permit, letter of authorization,
8 or registration in advance is a violation of this
9 section;

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

11 (A) It shall be the responsibility of the
12 transportation company to distribute, [~~prior to~~]
13 before the debarkation of passengers and baggage,
14 the State of Hawaii plant and animal declaration
15 form in paper or electronic form to each
16 passenger, officer, and crew member of any
17 aircraft or vessel originating in the continental
18 United States or its possessions or from any
19 other area not under the jurisdiction of the
20 appropriate federal agency [~~in order~~], so that
21 the passenger, officer, or crew member can comply



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

14 (B) Completed paper forms shall be collected by the
15 transportation company and be delivered,
16 immediately upon arrival, to the inspector at the
17 first airport or seaport of arrival. Completed
18 electronic forms shall be transmitted to the
19 inspector before passengers depart the first
20 airport or seaport of arrival. Failure to
21 distribute or collect paper declaration forms,



1 immediately deliver completed paper forms, or
2 transmit completed electronic forms before
3 passengers depart the first airport or seaport of
4 arrival is a violation of this section; and

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

14 (3) Plant and animal declaration form. The form shall
15 include directions for declaring domestic and other
16 animals cited in chapter 142, in addition to the
17 articles enumerated in this chapter;

18 (4) Labels. Each container in which any of the
19 abovementioned articles are imported into the State
20 shall be plainly and legibly marked, in a conspicuous
21 manner and place, with the name and address of the



1 shipper or owner forwarding or shipping the same, the
2 name or mark of the person to whom the same is
3 forwarded or shipped or the person's agent, the name
4 of the country, state, or territory and locality
5 therein where the product was grown or produced, and a
6 statement of the contents of the container. Upon
7 failure to comply with this paragraph, the importer or
8 carrier is in violation of this section;

9 (5) Authority to administratively inspect. [~~Whenever the~~
10 ~~inspector has good cause to believe that the~~
11 ~~provisions of this chapter are being violated, the~~
12 ~~inspector may:~~

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

20 ~~(B) Enter into or upon any pier, warehouse, airport,~~
21 ~~or any other place in the State where any of the~~



1 ~~above-mentioned articles are moved or stored, for~~
2 ~~the purpose of ascertaining, by inspection and~~
3 ~~examination, whether or not any of the articles~~
4 ~~is infested or infected with any pest or disease~~
5 ~~or contaminated with soil or contains prohibited~~
6 ~~plants or animals; and~~

7 ~~(C) Inspect any baggage or personal effects of~~
8 ~~disembarking passengers, officers, and crew~~
9 ~~members on aircraft or vessels arriving in the~~
10 ~~State to ascertain if they contain any of the~~
11 ~~articles or pests enumerated in this chapter. No~~
12 ~~baggage or other personal effects of the~~
13 ~~passengers or crew members shall be released~~
14 ~~until the baggage or effects have been passed.~~
15 ~~Baggage or cargo inspection shall be made at the~~
16 ~~discretion of the inspector, on the pier, vessel, or~~
17 ~~aircraft or in any quarantine or inspection area.~~

18 ~~Whenever the inspector has good cause to believe~~
19 ~~that the provisions of this chapter are being~~
20 ~~violated, the inspector may require that any box,~~
21 ~~package, suitcase, or any other container carried as~~



1 ~~ship's stores, cargo, or otherwise by any vessel or~~
2 ~~aircraft moving between the continental United States~~
3 ~~and Hawaii or between the Hawaiian Islands, be opened~~
4 ~~for inspection to determine whether any article or~~
5 ~~pest prohibited by this chapter or by rules adopted~~
6 ~~pursuant thereto is present. It is a violation of~~
7 ~~this section if any prohibited article or any pest or~~
8 ~~any plant, fruit, or vegetable infested with plant~~
9 ~~pests is found;]~~ An inspector:

10 (A) May conduct inspections of persons, baggage,
11 cargo, and any other articles destined for
12 movement between the Hawaiian Islands or
13 importation into the State from the continental
14 United States or any territory or possession of
15 the United States for the purpose of determining
16 whether an insect, pest, disease, or prohibited,
17 restricted, or regulated taxa is present;

18 (B) May enter and inspect any aircraft, vessel, or
19 other carrier at any time after its arrival
20 within the boundaries of the State, whether
21 offshore, at the pier, or at the airport, and



1 enter into or upon any pier, warehouse, airport,
2 or any other place in the State for the purpose
3 of conducting inspections authorized by
4 subparagraph (A); and
5 (C) May inspect any baggage and cargo on the pier,
6 vessel, or aircraft, or in any quarantine or
7 inspection area;

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

17 (A) Giving the following additional information:

18 (i) The kind (scientific name), quantity, and
19 description;

20 (ii) The locality where same were grown or
21 produced;



(iii) Certification that all animals to be imported are the progeny of captive populations or have been held in captivity for a period of one year immediately before importation or have been specifically approved for importation by the board;

(iv) The port from which the same were last shipped;

(v) The name of the shipper; and

(vi) The name of the consignee; and

(B) Containing:

(i) A request that the department, by its duly authorized agent, examine the articles described;

(ii) An agreement by the importer to be responsible for all costs, charges, or expenses; and

(iii) A waiver of all claims for damages incident to the inspection or the fumigation, disinfection, quarantine, or destruction of 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,]~~ items or materials to a place more suitable
12 for inspection than the pier, airport, or any other
13 place where they are first received or discharged, the
14 inspector is authorized to do so. All costs and
15 expenses incident to the movement and transportation
16 of the ~~[articles]~~ items or materials to any other
17 place shall be borne by the importer or the importer's
18 agent. If the importer, importer's agent, or
19 transportation company requests inspection of sealed
20 containers ~~[of the above-mentioned articles]~~ at
21 locations other than where the ~~[articles]~~ containers



1 are first received or discharged and the department
2 determines that inspection at the other place is
3 appropriate, the department may require payment of
4 costs necessitated by these inspections, including
5 overtime costs;

6 (8) Disinfection or quarantine. If, upon inspection, any
7 ~~[article]~~ item or material received or brought into
8 the State for the purpose of debarkation or entry
9 therein or moved between the Hawaiian Islands is found
10 to be so infested or infected, or there is reasonable
11 cause to presume that it is infested or infected, and
12 the infestation or infection can, in the judgment of
13 the inspector, be eradicated, a treatment shall be
14 given ~~[such article.]~~ to the item or material. The
15 treatment shall be at the expense of the owner or the
16 owner's agent, and the treatment shall be as
17 prescribed by the department. The ~~[article]~~ item or
18 material shall be held in quarantine at the expense of
19 the owner or the owner's agent at a satisfactory place
20 approved by the department for a sufficient length of
21 time to determine that eradication has been



1 accomplished. If the infestation or infection is of
2 the nature or extent that it cannot be effectively and
3 completely eradicated, or if it is a potentially
4 destructive pest or it is not widespread in the State,
5 or after treatment it is determined that the
6 infestation or infection is not completely eradicated,
7 or if the owner or the owner's agent refuses to allow
8 the ~~[article]~~ item or material to be treated or to be
9 responsible for the cost of treatment and quarantine,
10 the ~~[article,]~~ item or material, or any portion
11 thereof, together with all packing and containers,
12 may, at the discretion of the inspector, be destroyed
13 or sent out of the State at the expense of the owner
14 or the owner's agent. The destruction or exclusion
15 shall not be made the basis of a claim against the
16 department or the inspector for damage or loss
17 incurred;

- 18 (9) Disposition. Upon completion of inspection, either at
19 the time of arrival or at any time thereafter should
20 any ~~[article]~~ item or material be held for inspection,
21 treatment, or quarantine, the inspector shall affix to



1 the ~~[article]~~ item, material, or ~~[the]~~ container, or
2 to the delivery order in a conspicuous place thereon,
3 a tag, label, or stamp to indicate that the ~~[article]~~
4 item or material has been inspected and passed. This
5 action shall constitute a permit to bring the
6 ~~[article]~~ item or material into the State; and

7 (10) Ports of entry. None of the articles mentioned in
8 this section shall be allowed entry into the State
9 except through the airports and seaports in the State
10 designated and approved by the board."

11 SECTION 4. Section 150A-5.5, Hawaii Revised Statutes, is
12 amended by amending subsection (b) to read as follows:

13 "(b) In legal effect, articles landed for the purpose of
14 inspection or quarantine shall be construed to be still outside
15 the State seeking entry, and shall not, in whole or in part, be
16 considered suitable for entry into the State unless a tag,
17 label, or stamp has been affixed to the article, item, or
18 material, its container, or its delivery order by the inspector
19 as provided in section ~~[150A-5(9),]~~ 150A-5(b)(9), except that
20 articles quarantined in the biocontrol containment facilities of
21 the department or of other government agencies engaged in joint



1 projects with the department may be released upon issuance of a
2 permit approved by the board."

3 SECTION 5. Section 150A-14, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§150A-14 Penalty.** (a) Any person who violates any
6 provision of this chapter other than sections 150A-5, 150A-6(3),
7 and 150A-6(4) or who violates any rule adopted under this
8 chapter other than those rules involving an animal that is
9 prohibited ~~[of]~~, a plant~~[r]~~ that is restricted, or an animal~~[r]~~
10 or microorganism that is restricted~~[r]~~ or unlisted, without a
11 permit, shall be ~~[guilty of a misdemeanor and]~~ fined not less
12 than \$100~~[. The provisions of section 706-640 notwithstanding,~~
13 ~~the maximum fine shall be]~~ and not more than \$10,000. For a
14 second ~~[offense]~~ violation committed within five years of a
15 prior ~~[offense]~~ violation, the person ~~[or organization]~~ shall
16 be fined not less than \$500 and not more than \$25,000. Each day
17 of violation shall constitute a separate offense. Any action
18 taken to impose or collect the penalty provided for in this
19 subsection shall be considered a civil action.
20 (b) Any person who violates ~~[section]~~:



(1) Section 150A-5 shall be ~~[guilty of a petty misdemeanor~~
~~and]~~ fined not less than ~~[\$50]~~ \$100 and not more than
[\$5,000.] \$10,000. For a second ~~[offense]~~ violation
committed within five years of a prior ~~[offense,]~~
violation, the person may be fined not less than
[\$250] \$500 and not more than ~~[\$15,000.]~~ \$25,000; or

(2) Section 150A-6(3) or 150A-6(4), or owns or transports,
possesses, harbors, transfers, or causes the
importation of any snake or other prohibited animal
seized under section 150A-7(b), or whose violation
involves an animal that is prohibited, or a plant that
is restricted, or an animal or microorganism that is
restricted or unlisted, without a permit, shall be
fined not less than \$1,000 and not more than \$20,000.
For a second violation committed within five years of
a prior violation, the person may be fined not less
than \$ _____ and not more than \$ _____.

Each day of violation shall constitute a separate offense.

Any action taken to impose or collect the penalty provided for
in this subsection shall be considered a civil action.

(c) Any person who:



- 1 (1) ~~[Violates]~~ Knowingly violates section 150A-6(3) or
2 150A-6(4), ~~[or owns]~~ or ~~[intentionally]~~ knowingly
3 transports, possesses, harbors, transfers, or causes
4 the importation of any snake or other prohibited
5 animal seized under section 150A-7(b), or whose
6 violation knowingly involves an animal that is
7 prohibited ~~[or]~~, a plant~~[r]~~ that is restricted, or an
8 animal~~[r]~~ or microorganism that is restricted~~[r]~~ or
9 unlisted, without a permit, shall be guilty of a
10 misdemeanor and subject to a fine of not less than
11 \$5,000~~[r but]~~ and not more than \$20,000;
- 12 (2) ~~[Intentionally]~~ Knowingly transports, harbors, or
13 imports with the intent to propagate, sell, or release
14 any animal that is prohibited ~~[or]~~, any plant~~[r]~~ that
15 is restricted, or any animal~~[r]~~ or microorganism that
16 is restricted~~[r]~~ or unlisted, without a permit, shall
17 be guilty of a class C felony and subject to a fine of
18 not less than \$50,000~~[r but]~~ and not more than
19 \$200,000; or
- 20 (3) ~~[Intentionally]~~ Knowingly imports, possesses, harbors,
21 transfers, or transports, including through



1 interisland or intrainland movement, with the intent
2 to propagate, sell, or release, any pest designated by
3 statute or rule, unless otherwise allowed by law,
4 shall be guilty of a class C felony and subject to a
5 fine of not less than \$50,000[, ~~but~~] and not more than
6 \$200,000.

7 (d) Whenever a [~~court sentences a~~] person [~~or~~
8 ~~organization~~] is subject to a penalty pursuant to subsection
9 (a), (b), or (c) for [an offense which] a violation that has
10 resulted in the escape or establishment of any pest and caused
11 the department to initiate a program to capture, control, or
12 eradicate that pest, [~~the~~] a court [shall also] may require that
13 the person [~~or organization~~] pay [~~to the state general fund~~] an
14 amount of money to be determined in the discretion of the court
15 upon advice of the department, based upon the cost of the
16 development and implementation of the program. Any amount
17 collected under to this subsection shall be deposited into the
18 pest inspection, quarantine, and eradication fund established
19 pursuant to section 150A-4.5.

20 (e) The department may, at its discretion, refuse entry,
21 confiscate, or destroy any prohibited articles or restricted



1 articles that are brought into the State without a permit issued
2 by the department, or order the return of any plant, fruit,
3 vegetable, or any other article infested with pests to its place
4 of origin or otherwise dispose of it or ~~[such]~~ any part thereof
5 as may be necessary to comply with this chapter. Any expense or
6 loss in connection therewith shall be borne by the owner or the
7 owner's agent.

8 (f) Any person ~~[or organization]~~ that voluntarily
9 surrenders any prohibited animal ~~[or]~~, any restricted plant, or
10 any restricted or unlisted animal~~[7]~~ or microorganism, without a
11 permit issued by the department, ~~[prior to]~~ before the
12 initiation of any seizure action by the department, shall be
13 exempt from the penalties of this section.

14 (g) When construing and enforcing this chapter, the act,
15 omission, or failure of any officer, agent, or other person
16 acting for or employed by any person shall in every case be
17 deemed to also be the act, omission, or failure of the person
18 and that of the person employed.

19 ~~[(g)]~~ (h) For purposes of this section, "intent to
20 propagate" shall be presumed when the person in question is
21 found to possess, transport, harbor, or import:



1 (1) Any two or more animal specimens of the opposite sex
2 that are prohibited or restricted, without a permit,
3 or are a pest designated by statute or rule;

4 (2) Any three or more animal specimens of either sex that
5 are prohibited or restricted, without a permit, or are
6 a pest designated by statute or rule;

7 (3) Any plant or microorganism having the inherent
8 capability to reproduce and that is restricted,
9 without a permit; or

10 (4) Any specimen that is in the process of reproduction."

11 SECTION 6. This Act does not affect rights and duties that
12 matured, penalties that were incurred, and proceedings that were
13 begun before its effective date.

14 SECTION 7. If any provision of this Act, or the
15 application thereof to any person or circumstance, is held
16 invalid, the invalidity does not affect other provisions or
17 applications of the Act that can be given effect without the
18 invalid provision or application, and to this end the provisions
19 of this Act are severable.

20 SECTION 8. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



1 SECTION 9. This Act shall take effect upon its approval.



Report Title:

DOA; Pests; Invasive Species; Importation; Inspection; Sale;
Prohibition; Quarantine; Penalties

Description:

Clarifies that the importation of any item or material infested or infected with an insect or other animal, disease, or other pest is prohibited. Authorizes the Department of Agriculture to inspect any item imported or moved into the State from another part of the continental United States or between the Hawaiian Islands. Prohibits the sale of merchandise that a seller knows is infested or infected with a pest. Authorizes the Department of Agriculture to compel the quarantine, treatment, or destruction of certain materials. Clarifies penalties for violations. (SD1)

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

