
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, according to the
2 2020 United States Department of Agriculture's Summary of
3 Horticulture and Nursery Products, Hawaii's nursery industry is
4 worth more than \$81,000,000 in local and export sales. Invasive
5 species, including the coconut rhinoceros beetle, little fire
6 ant, and coqui frog, and viruses and pathogens that affect plant
7 life can hamper the productivity, profitability, and prospects
8 of local plant nursery businesses.

9 The legislature further finds that the National Plant Board
10 has recognized plant nurseries as major pathways for the
11 introduction and spread of pests and diseases and has provided a
12 model nursery law with draft language that is sensible for
13 nurseries, regulatory officials, and the public. While most
14 nurseries employ best management practices to protect their
15 stock from pests, some do not. Consequently, the legislature
16 finds that regulation is necessary to protect the many from the
17 few.



1 The legislature further finds that a program requiring
2 plant nurseries to register with the department of agriculture
3 and prohibiting the sale of pest-infested plants and other items
4 is a common sense approach to protect consumers, agricultural
5 producers, the general public, and the environment.

6 The legislature notes that other states require that plant
7 nurseries be regularly inspected and licensed or certified,
8 including Alabama, which requires an annual inspection
9 certificate for certain sellers of nursery stock. Maryland and
10 Massachusetts also require that nurseries, or places where
11 nursery stock is grown, be inspected and certified annually.
12 These states also require that certain fees be paid, based on
13 the size of the nursery, to obtain the necessary credentials.
14 Many other states, including Delaware, Kentucky, Michigan, New
15 Hampshire, New Mexico, Ohio, Oregon, and Rhode Island, have
16 similar programs.

17 The legislature also finds that the department of
18 agriculture's existing nursery inspection program established in
19 part III of chapter 150A, Hawaii Revised Statutes, relating to
20 nursery stock export shipments, and the administrative rules to
21 carry out that part, were last updated in 1981 and are limited



1 to the certifications required to export plants from Hawaii to
2 other states. The existing requirements are therefore not a
3 comprehensive program to protect consumers in Hawaii from
4 inadvertently purchasing plants infested with pests.

5 Accordingly, the purpose of this Act is to establish a
6 plant nursery registration program to prevent the spread of
7 pests within the State.

8 SECTION 2. Chapter 150A, Hawaii Revised Statutes, is
9 amended as follows:

10 1. By adding a new part to be appropriately designated and
11 to read:

12 **"PART . PLANT NURSERY REGISTRATION PROGRAM**

13 **§150A-A Definitions.** As used in this part:

14 "Best management practices" means any process, action, or
15 combinations thereof, that provides effective means of
16 preventing, reducing, or addressing pest, insect, and plant
17 disease issues.

18 "Nursery stock" means any plant for planting, propagation,
19 or ornamentation, including plants used to produce cut flowers;
20 cut foliage; fresh fruit and vegetables; plants; trees; shrubs;
21 vines; perennials; cut flowers; grafts; cuttings; and buds,



1 whether cultivated or wild, and all viable parts of these
2 plants.

3 "Sale" or "sell" means offering, exposing, or possessing
4 for sale, exchange, barter, or trade.

5 **§150A-B Nursery registration.** (a) Any person directly
6 engaged with the production or sale of nursery stock, including
7 any person that sells, or produces for sale, nursery stock at
8 pop-up sales, craft fairs, or fundraising events, or as part of
9 a commercial landscaping business, shall register with the
10 department using an online registration form developed by the
11 department, which shall also be made available in paper form,
12 before initiating business operations; provided that any person
13 directly engaged in the production or sale of nursery stock
14 before or on the effective date of this Act shall register with
15 the department no later than one year from the effective date of
16 this Act.

17 (b) Each initial and renewal nursery registration shall be
18 valid for one year.

19 (c) The department may exempt from the nursery
20 registration requirement any person whose business consists only



1 of retail sales to the ultimate consumer where the total sales
2 of nursery stock do not exceed \$2,500 per year.

3 (d) A person shall register, pursuant to subsection (a),
4 each location where the person intends to produce, sell, or
5 regularly store or distribute nursery stock.

6 **§150A-C Certification.** Each person initially registering
7 a location pursuant to section 150A-B shall certify to the
8 department that the person:

9 (1) Will not sell at the location any plant taxa
10 designated by the department as:

11 (A) A restricted plant in violation of the
12 department's sale restriction on that taxa; or

13 (B) A noxious weed;

14 (2) Will maintain the location, including nursery stock
15 and all other materials, to be free from pests and
16 document in a log book all dates on which actions are
17 taken to ensure that the location is free of pests,
18 including a description of those actions;

19 (3) Will report to the department any new occurrence of a
20 pest;



1 (4) Will not sell or distribute nursery stock that is
2 infested or infected with a pest;

3 (5) Will utilize best management practices to maintain
4 control of pests;

5 (6) Will report to the department any occurrence of a
6 taxa, including a plant disease, that is not known to
7 occur in the State;

8 (7) Will implement any best management practices required
9 by the department for the location; and

10 (8) Consents to, and agrees to cooperate with, inspections
11 by the department during reasonable business hours to
12 ensure that the person is in compliance with the
13 certification required by this section.

14 **§150A-D Nursery registration fee.** (a) The department may
15 charge a fee for registration under this part.

16 (b) Any fees collected under this section shall be paid to
17 the department and deposited into the pest inspection,
18 quarantine, and eradication fund established under section
19 150A-4.5.

20 **§150A-E Inspection; quarantine; remedial measures.** (a)
21 The department may administratively inspect, with or without



1 notice during reasonable business hours, a location registered
2 pursuant to section 150A-B, including all nursery stock and
3 other materials at the location. The inspection of the location
4 shall not include the inspection of dwellings or other
5 structures at the location that are not associated with the
6 nursery stock.

7 (b) The department may:

8 (1) Conduct inspections pursuant to subsection (a) in
9 response to a complaint alleging the presence of pests
10 or failure to maintain control of pests; and

11 (2) Prioritize and conduct more frequent inspections
12 pursuant to subsection (a) based on its assessment of
13 the location's history of compliance with this part
14 and the location's potential for spreading pests.

15 (c) If the department, after an inspection authorized
16 under this section or by any other means, finds that a pest is
17 present in nursery stock or any other material at a location
18 where nursery stock is present, that pests are not under control
19 at the location, or that the person who has registered the
20 location pursuant to section 150A-B is otherwise not in



1 compliance with a certification made under section 150A-C, the
2 department may:

3 (1) Require the implementation of specific best management
4 practices or other actions, including treatment;

5 (2) Issue a quarantine order for the affected nursery
6 stock, other material, or location and, if
7 appropriate, a treatment or destruction order for
8 affected nursery stock or material; and

9 (3) Require the affected nursery stock or material to be
10 mitigated by whatever means necessary, including
11 destruction, confiscation, treatment, return shipment,
12 or quarantine, at the expense of the person who
13 registered the location, without any form of
14 compensation from the department or State.

15 (d) If the department issues an order pursuant to
16 subsection (c) for nursery stock, other material, or a location,
17 the department shall provide, in writing, to the person who
18 registered the location:

19 (1) Notice that the order has been issued, including a
20 description of the specific nursery stock, other
21 material, or a location that is covered by the order;



1 (2) A description of the specific reasons for the issuance
2 of the order and the actions required to comply with
3 the order; and

4 (3) Notice that the person who registered the location may
5 request a subsequent inspection to lift the order;
6 provided that, after the inspection, the department
7 may lift the order if the department determines that
8 the violation that caused the department to issue the
9 order has been corrected.

10 (e) During the period that an order issued pursuant to
11 subsection (c) is in effect for nursery stock, other material,
12 or a location, no person shall sell, ship, transport, donate, or
13 otherwise move, alter, or tamper with affected nursery stock or
14 material at the location, unless required to comply with an
15 order from, or under the direction of, the department.

16 **§150A-F Economic loss or damage.** The State shall not be
17 liable for any economic loss or damages, including loss of
18 income, related to any actions taken by the department pursuant
19 to this part or any rules adopted under this part, including the
20 issuance of treatment, confiscation, quarantine, return
21 shipment, or destruction orders for any item.



1 **§150A-G Rules.** The department may adopt rules pursuant to
2 chapter 91 to carry out the purposes of this part."

3 2. By adding a new section to part III to be appropriately
4 designated and to read:

5 "**§150A- Nursery registration required.** No
6 certification or service related to nursery stock shall be
7 provided under this part to any person at a location unless that
8 location is registered pursuant to part ."

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

11 "**§150A-14 Penalty.** (a) Any person who violates any
12 provision of this chapter other than sections 150A-5, 150A-6(3),
13 and 150A-6(4) and part , or who violates any rule adopted
14 under this chapter other than those rules involving an animal
15 that is prohibited or a plant, animal, or microorganism that is
16 restricted, without a permit, and rules adopted under
17 part , shall be guilty of a misdemeanor and fined [~~not~~] no
18 less than \$100. The provisions of section 706-640
19 notwithstanding, the maximum fine shall be \$10,000. For a
20 second offense committed within five years of a prior offense,



1 the person or organization shall be fined [~~not~~] no less than
2 \$500 and [~~not~~] no more than \$25,000.

3 (b) Any person who violates section 150A-5 shall be guilty
4 of a petty misdemeanor and fined [~~not~~] no less than \$50 and
5 [~~not~~] no more than \$5,000. For a second offense committed
6 within five years of a prior offense, the person may be fined
7 [~~not~~] no less than \$250 and [~~not~~] no more than \$15,000.

8 (c) Any person who:

- 9 (1) Violates section 150A-6(3) or 150A-6(4), or owns or
10 intentionally transports, possesses, harbors,
11 transfers, or causes the importation of any snake or
12 other prohibited animal seized under section
13 150A-7(b), or whose violation involves an animal that
14 is prohibited or a plant, animal, or microorganism
15 that is restricted, without a permit, shall be guilty
16 of a misdemeanor and subject to a fine of [~~not~~] no
17 less than \$5,000[, ~~but not~~] and no more than \$20,000;
- 18 (2) Intentionally transports, harbors, or imports with the
19 intent to propagate, sell, or release any animal that
20 is prohibited or any plant, animal, or microorganism
21 that is restricted, without a permit, shall be guilty



1 of a class C felony and subject to a fine of [~~not~~] no
2 less than \$50,000[~~, but not~~] and no more than
3 \$200,000; or

4 (3) Intentionally imports, possesses, harbors, transfers,
5 or transports, including through interisland or
6 intransland movement, with the intent to propagate,
7 sell, or release, any pest designated by statute or
8 rule, unless otherwise allowed by law, shall be guilty
9 of a class C felony and subject to a fine of [~~not~~] no
10 less than \$50,000[~~, but not~~] and no more than
11 \$200,000.

12 (d) Any person who violates part or any rule adopted
13 under part shall be fined no more than \$ for
14 each separate offense. Each date of violation shall constitute
15 a separate offense. Any action taken to impose or collect the
16 penalty provided for in this subsection shall be considered a
17 civil action. All fines collected pursuant to this subsection
18 shall be paid to the department and deposited into the pest
19 inspection, quarantine, and eradication fund established under
20 section 150A-4.5.



1 [~~(d)~~] (e) Whenever a court sentences a person or
2 organization pursuant to subsection (a) or (c) for an offense
3 [~~which~~] that has resulted in the escape or establishment of any
4 pest and caused the department to initiate a program to capture,
5 control, or eradicate that pest, the court shall also require
6 that the person or organization pay to the state general fund an
7 amount of money to be determined in the discretion of the court
8 upon advice of the department, based upon the cost of the
9 development and implementation of the program.

10 [~~(e)~~] (f) The department may, at its discretion, refuse
11 entry, confiscate, or destroy any prohibited articles or
12 restricted articles that are brought into the State without a
13 permit issued by the department, or order the return of any
14 plant, fruit, vegetable, or any other article infested with
15 pests to its place of origin or otherwise dispose of it or
16 [~~such~~] any part thereof as may be necessary to comply with this
17 chapter. Any expense or loss in connection therewith shall be
18 borne by the owner or the owner's agent.

19 [~~(f)~~] (g) Any person or organization that voluntarily
20 surrenders any prohibited animal or any restricted plant,
21 animal, or microorganism without a permit issued by the



1 department, [~~prior to~~] before the initiation of any seizure
2 action by the department, shall be exempt from the penalties of
3 this section.

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

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

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

13 (3) Any plant or microorganism having the inherent
14 capability to reproduce and that is restricted,
15 without a permit; or

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

17 SECTION 4. Section 150A-53, Hawaii Revised Statutes, is
18 amended to read as follows:

19 **"§150A-53 General actions to achieve objectives.** (a) To
20 achieve the objectives of the biosecurity program, the
21 department shall plan for and, within available legislative



1 appropriations or through funding from other sources, implement
2 the following:

3 (1) Work with government agencies and agricultural
4 commodity exporters of other states and countries to
5 establish pre-entry inspection programs under which
6 inbound cargo into the State is inspected at the ports
7 of departure or other points outside the State;

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

14 (A) Performing inspections in an efficient,
15 effective, and expeditious manner for the
16 government agencies involved and for cargo
17 owners, carriers, and importers; and

18 (B) Providing for the proper and safe storage and
19 handling of cargo, especially agricultural and
20 food commodities, awaiting inspection;



- 1 (3) Develop, implement, and coordinate post-entry measures
2 to eradicate, control, reduce, and suppress pests and,
3 as appropriate, eradicate or seize and dispose of
4 prohibited or restricted organisms without a permit
5 that have entered the State;
- 6 (4) Collaborate with relevant government agencies,
7 agricultural commodity importers, and other persons to
8 examine and develop joint integrated systems to better
9 implement the biosecurity program;
- 10 (5) Improve cargo inspection capabilities and methods,
11 including enhancement of the content and submission
12 requirements for cargo manifests and agricultural
13 commodity ownership and movement certificates;
- 14 (6) Promote the production of agricultural commodities in
15 the State to reduce cargo shipments of imported
16 commodities into the State; and
- 17 (7) Provide public education on the negative effects of
18 pests and prohibited or restricted organisms without a
19 permit[7] to the environment and economy of the State.
- 20 (b) The department shall establish parameters and
21 construction requirements for biosecurity facilities that



1 provide for and ensure the safety of agricultural and food
2 commodities consumed by Hawaii residents, including cold storage
3 facilities established by private-public partnerships to
4 preserve the quality and ensure the safety of the commodities
5 arriving at the State's airports and harbors.

6 (c) The plant nursery registration program established
7 under part _____ :

8 (1) Shall be considered a part of the biosecurity program;
9 and

10 (2) May be administered by and enforced using the
11 officials and funds available to the biosecurity
12 program."

13 SECTION 5. This Act does not affect rights and duties that
14 matured, penalties that were incurred, and proceedings that were
15 begun before its effective date.

16 SECTION 6. In codifying the new sections added by section
17 2 of this Act, the revisor of statutes shall substitute
18 appropriate section numbers for the letters used in designating
19 the new sections in this Act.

20 SECTION 7. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



1 SECTION 8. This Act shall take effect on July 1, 3000.



Report Title:

DOA; Invasive Species; Plant Nursery Registry Program; Pests;
Taxa; Quarantine; Control and Eradication; Biosecurity

Description:

Establishes a Plant Nursery Registry Program to regulate the sale of nursery stock. Requires certain plant nurseries to register with the Department of Agriculture. Establishes penalties. Effective 7/1/3000. (HD1)

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