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# 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, others 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 require that certain fees be paid, based on the  
13   size of the nursery, to obtain the necessary credentials. Many  
14   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) A person shall renew their nursery registration each  
18 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; provided that the  
2 total sales of nursery stock does not exceed \$2,500 per year.

3 (d) A person shall register, pursuant to subsection (a),  
4 each location where the person produces, sells, or regularly  
5 stores or distributes nursery stock.

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

9 (1) Shall 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) Shall 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 any actions  
17 were taken to ensure that the location is free of  
18 pests, including a description of those actions;

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



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

(5) Shall utilize best management practices to maintain control of pests;

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

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

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

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

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

**§150A-E Inspection; quarantine; remedial measures.** (a) 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;





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

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

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

**§150A-F Economic loss or damage.** The State shall not be liable for any economic loss or damages, including loss of income, related to any actions taken by the department pursuant to this part or any rules adopted under this part. Actions include the issuance of treatment, quarantine, 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 certification  
6 or service related to nursery stock may be provided under this  
7 part to any person at a location unless that location is  
8 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  
14 adopted under this chapter other than those rules involving an  
15 animal that is prohibited or a plant, animal, or microorganism  
16 that is restricted, without a permit, and those rules adopted  
17 under part       , shall be guilty of a misdemeanor and fined not  
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 less than \$500 and  
2 not more than \$25,000.

3 (b) Any person who violates section 150A-5 shall be guilty  
4 of a petty misdemeanor and fined not less than \$50 and not more  
5 than \$5,000. For a second offense committed within five years  
6 of a prior offense, the person may be fined not less than \$250  
7 and not 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 less  
17 than \$5,000[~~, but~~] and not 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 less  
2 than \$50,000[~~, but~~] and not more than \$200,000; or

3 (3) Intentionally imports, possesses, harbors, transfers,  
4 or transports, including through interisland or  
5 intransisland movement, with the intent to propagate,  
6 sell, or release, any pest designated by statute or  
7 rule, unless otherwise allowed by law, shall be guilty  
8 of a class C felony and subject to a fine of not less  
9 than \$50,000[~~, but~~] and not more than \$200,000.

10 (d) Any person who violates part or any rule adopted  
11 under part shall be fined not more than \$ for  
12 each separate offense. Each date of violation shall constitute  
13 a separate offense. Any action taken to impose or collect the  
14 penalty provided for in this subsection shall be considered a  
15 civil action. All fines collected pursuant to this subsection  
16 shall be paid to the department and deposited into the pest  
17 inspection, quarantine, and eradication fund established under  
18 section 150A-4.5.

19 [~~(d)~~] (e) Whenever a court sentences a person or  
20 organization pursuant to subsection (a) or (c) for an offense  
21 [~~which~~] that has resulted in the escape or establishment of any



1 pest and caused the department to initiate a program to capture,  
2 control, or eradicate that pest, the court shall also require  
3 that the person or organization pay to the state general fund an  
4 amount of money to be determined in the discretion of the court  
5 upon advice of the department, based upon the cost of the  
6 development and implementation of the program.

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

16       ~~[(f)]~~ (g) Any person or organization that voluntarily  
17 surrenders any prohibited animal or any restricted plant,  
18 animal, or microorganism without a permit issued by the  
19 department, ~~[prior to]~~ before the initiation of any seizure  
20 action by the department, shall be exempt from the penalties of  
21 this section.



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

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

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

10       (3) Any plant or microorganism having the inherent  
11           capability to reproduce and that is restricted,  
12           without a permit; or

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

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

16       "**§150A-53 General actions to achieve objectives.** (a) To  
17 achieve the objectives of the biosecurity program, the  
18 department shall plan for and, within available legislative  
19 appropriations or through funding from other sources, implement  
20 the following:



- 1       (1) Work with government agencies and agricultural  
2       commodity exporters of other states and countries to  
3       establish pre-entry inspection programs under which  
4       inbound cargo into the State is inspected at the ports  
5       of departure or other points outside the State;
- 6       (2) Establish, operate, or participate in operating  
7       port-of-entry facilities where multiple government  
8       agencies may inspect, quarantine, fumigate, disinfect,  
9       destroy, or exclude as appropriate, articles that may  
10      harbor pests or exclude articles that are prohibited  
11      or restricted without a permit, with the goals of:
- 12      (A) Performing inspections in an efficient,  
13      effective, and expeditious manner for the  
14      government agencies involved and for cargo  
15      owners, carriers, and importers; and
- 16      (B) Providing for the proper and safe storage and  
17      handling of cargo, especially agricultural and  
18      food commodities, awaiting inspection;
- 19      (3) Develop, implement, and coordinate post-entry measures  
20      to eradicate, control, reduce, and suppress pests and,  
21      as appropriate, eradicate or seize and dispose of



1 prohibited or restricted organisms without a permit  
2 that have entered the State;

3 (4) Collaborate with relevant government agencies,  
4 agricultural commodity importers, and other persons to  
5 examine and develop joint integrated systems to better  
6 implement the biosecurity program;

7 (5) Improve cargo inspection capabilities and methods,  
8 including enhancement of the content and submission  
9 requirements for cargo manifests and agricultural  
10 commodity ownership and movement certificates;

11 (6) Promote the production of agricultural commodities in  
12 the State to reduce cargo shipments of imported  
13 commodities into the State; and

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

17 (b) The department shall establish parameters and  
18 construction requirements for biosecurity facilities that  
19 provide for and ensure the safety of agricultural and food  
20 commodities consumed by Hawaii residents, including cold storage  
21 facilities established by private-public partnerships to





1 preserve the quality and ensure the safety of the commodities  
2 arriving at the State's airports and harbors.

3 (c) The plant nursery registration program established  
4 under part :

5 (1) Shall be considered to be a part of the biosecurity  
6 program; and

7 (2) May be administered by and enforced using the  
8 officials and funds available to the biosecurity  
9 program."

10 SECTION 5. This Act does not affect rights and duties that  
11 matured, penalties that were incurred, and proceedings that were  
12 begun before its effective date.

13 SECTION 6. Statutory material to be repealed is bracketed  
14 and stricken. New statutory material is underscored.

15 SECTION 7. This Act shall take effect on July 1, 2050.



**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 7/1/2050. (SD2)

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

