

**ACT 257**

**H.B. NO. 208**

**A Bill for an Act Relating to Grades and Standards.**

***Be It Enacted by the Legislature of the State of Hawaii:***

**SECTION 1.** A system of grades and standards assists in the orderly marketing of agricultural commodities and assures consumers that they are getting what they pay for. For ease of enforcement the definition of commodities and penalty structure should be standardized.

Various parts of Chapter 147 define agricultural products subject to grades and standards differently. Some refer to fruits, vegetables, and nuts, while others refer to fruits vegetables, and coffee. The Attorney General's office has interpreted fruits to include nuts but has made no interpretation on coffee. Definitions should be standardized to include fruits, vegetables, nuts, and coffee.

Under Chapter 147 the procedure for imposing fines requires criminal or civil action. The prosecutor's office has not been able to handle requests for assistance in prosecuting violators due to a heavy load of cases. The lack of ability

to impose administrative penalties in enforcing grades and standards greatly reduces the ability of the department of agriculture to achieve compliance with the law. The level of fines contained within these statutes has been in effect for several decades and needs to be revised to be current with the overall structure of fines.

The license fee for commercial exporters of flowers and foliage is not in line with similar license fees for dealers in farm produce. Granting the department of agriculture the ability to set this license fee through rule would assure equity.

SECTION 2. Section 147-1, Hawaii Revised Statutes, is amended to read as follows:

**“§147-1 Definitions.** As used in this part, the term:

- (1) “Department” means the department of agriculture;
- (2) “Producer” means any person engaged within the State in the growing or production for market of any agricultural commodity, or any cooperative association of such persons;
- (3) “Agricultural commodity” means fresh fruits and fresh vegetables of every kind and character, whether or not frozen or packed in ice, whether produced in the State or imported, nuts, and coffee, whether cherry, parchment, or green beans which have been produced in the State;
- (4) “Produce dealer” means any person other than a producer who is engaged in the selling, marketing, or distributing of any agricultural commodity or in the business of soliciting or negotiating the sale of any farm product, but does not include any person selling solely at retail. For the purposes of this definition, sales to the United States army or navy, restaurants, hotels, hospitals, or other institutions are not retail sales;
- (5) “Offgrade” is a descriptive term applicable to agricultural commodities which have a market value, and designates a quality lower than the lowest applicable in Hawaii, other states or the United States grade for each agricultural commodity;
- (6) “Consumer” means any person or firm purchasing agricultural commodities for human consumption or animal consumption.”

SECTION 3. Section 147-2, Hawaii Revised Statutes, is amended to read as follows:

**“§147-2 Duties of department; violations; proceedings; penalties.** The department [of agriculture] shall administer and enforce this part and [any] rules [or regulations made] adopted by the department pursuant thereto.

The following penalties, remedies, procedures, and actions shall apply in instances of violations and complaints of violations of this part, or of the rules [and regulations issued] adopted by the department under the authority of this part:

- (1) [Civil action. Any person who violates any provisions of this part or any rule or regulation issued thereunder shall be liable civilly in an action brought by the department for a penalty in an amount not to exceed a sum of \$500 for each and every violation. Any money

recovered by the department under this provision shall be deposited with the state director of finance to the credit of the general fund;]

Administrative penalty. The department may, after notice and hearing, fine any person who violates this part or any rule adopted under this part, not more than \$1,000 for each separate offense. Each day or instance 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;

- (2) Nuisance may be enjoined, abated. Violation of this part or any [regulation issued] rule adopted thereunder is declared a public nuisance and may be enjoined or abated as such in a suit filed and prosecuted in the circuit court by the department or the attorney general. The several circuit courts are hereby vested with jurisdiction to prevent and restrain violation of this part or of any [regulation] rule effective thereunder;
- (3) [[Fine.] Every person who violates any provision of this part or of any rule or regulation issued thereunder shall be fined not less than \$50 nor more than \$500. Each day during which any of the above violations referred to continue shall constitute a separate offense;]

Misdemeanor. Any person who violates this part or any rule adopted under this part shall be fined not more than \$1,000 or imprisoned not more than one year, or both;

- [(4) Complaints, hearings. Upon the filing of a written verified complaint charging violation of any provision of this part or of any rule or regulation issued thereunder and prior to institution of any court proceedings authorized by this section, the department may refer the matter to the attorney general or any public prosecutor for action pursuant to the provisions of this part or call a hearing to consider the charges set forth in such complaint. In such case the department shall cause a copy of the complaint, together with a notice of the time and place of hearing of the complaint, to be served on the person complained against, to be known as the respondent, either in person or by mail. The service shall be made at least ten days before the time set for the hearing. The hearing shall be held in the city or town in which is situated the principal place of business of the respondent, or in which the violation complained of is alleged to have occurred, or in the nearest office of the department, at the discretion of the department. At the time and place designated for the hearing the department shall hear the parties to the complaint and shall make findings based upon the facts established at the hearing. If the department finds that no violation has occurred it shall forthwith dismiss the complaint and notify the parties to the complaint. If the department finds a violation has occurred it shall so enter its findings and notify the parties to the complaint. Should the respondent thereafter fail, neglect, or refuse to desist from the violation, the department may thereupon bring, or

cause to be brought, action in a circuit court for the enforcement of this part;]

- [(5)] (4) The penalties and remedies prescribed in this section with respect to any violation mentioned in this section shall be concurrent and alternative and neither singly nor combined shall the same be exclusive and either singly or combined the same shall be cumulative with any and all other civil, criminal, or alternative rights, remedies, or penalties provided or allowed by law with respect to any such violation."

SECTION 4. Section 147-6, Hawaii Revised Statutes, is amended to read as follows:

**"§147-6 Unlawful to trade in commodities without specifying grade; penalty.** It shall be unlawful for a person to sell, offer for sale, or expose for sale to a consumer, any agricultural commodity intended for human consumption, without specifying by suitable sign or label, the exact grade or "offgrade" designation applicable to agricultural commodities offered for sale in bulk displays, or to sell, offer, or expose for sale agricultural commodities which are packaged without designating on the packages also the net weight or count in words and figures visible to the consumer. [Any person who is convicted of any violation of this section shall be punished by a fine of not more than \$1000 or confinement for not more than three months, or both. Violations of this section shall also be subject to sections 147-25 (b) and (c).]"

SECTION 5. Chapter 147, Part II, Hawaii Revised Statutes, is amended to read as follows:

**"PART II. EXPORTS: FRUITS, VEGETABLES,  
[AND] NUTS, AND COFFEE**

**§147-21 Definitions.** For the purposes of this part, unless otherwise required by the context:

"Agricultural commodity" means fruits, vegetables, nuts and coffee;

"Department" means the department of agriculture;

"Commercial exporter" means any person who is engaged in the business of exporting fresh or processed [fruits, vegetables, and nuts] agricultural commodities to points outside the State;

"Processed" means canned, preserved, frozen, pickled, dried, or otherwise prepared with or without any ingredients added thereto;

"Style" means the kind or class of any particular processed [fruit, vegetable, and nut] agricultural commodity as determined by its physical characteristics, usually the size and shape thereof.

**§147-22 Rules [and regulations].** The department [of agriculture] shall have the necessary powers to carry out and effectuate the purposes of this part, including the following:

To establish, prescribe, modify, or alter, by rules [and regulations], which shall have the force and effect of law, such grades, standards, and classifications as shall be the minimum requirements for fresh and processed [fruits, vegetables, and nuts] agricultural commodities destined for shipment by commercial exporters to

points outside the State; provided, that the provisions of such grades, standards, and classifications shall not excuse failure to comply with the provisions of the federal and state food, drug, and cosmetic acts. The department in establishing such rules [and regulations] shall consult with appropriate state and federal agencies and with any appropriate industry or trade organization. The standards, grades, and classification so established shall be on the basis of what the department may deem best suited to the agricultural, horticultural, or other interests of the State, provided, that the minimum requirements for the grades, standards and classifications so established for processed [fruits, vegetables, and nuts] agricultural commodities shall not be higher than that of any standardized product which is sanitary and which has been demonstrated to be a commercially-acceptable product of the class to which it belongs and for which a market has been established; provided, further, that different minimum requirements may be applied to different styles of processed [fruits, vegetables, and nuts] agricultural commodities; and provided, further, that any processed pineapple product, in which the fruit ingredient is a least ninety-five per cent pineapple in compliance with the provisions of the federal and state food, drug, and cosmetic acts, may be exported from the State.

**§147-23 Prohibited acts.** No commercial exporter shall ship any fresh or processed [fruits, vegetables, and nuts] agricultural commodities to points outside the State unless such products meet the quality and condition requirements of the rules [and regulations promulgated] adopted under this part.

**§147-24 Inspection.** The board of agriculture may designate any employee or agent of the department to inspect or classify fresh and processed [fruits, vegetables, and nuts] agricultural commodities.

**§147-25 Duties of department; violations; proceedings; penalties.** (a) The department [of agriculture] shall administer and enforce the provisions of this part and [any] rules [or regulations promulgated] adopted thereunder.

[(b) Civil action. Any person who violates this part or any rule or regulation promulgated thereunder shall be liable for damages in civil action brought by the department in the name of the State for a penalty in an amount not to exceed \$500 for each and every violation. Any money recovered by the department under this provision shall be deposited in the general fund of the State.

(c) Nuisance may be enjoined, abated. Violation of this part or of any regulation promulgated thereunder is declared a public nuisance and may be enjoined or abated as such in a suit filed and prosecuted in the circuit wherein such public nuisance is committed by the department or the attorney general. The several circuit courts are hereby vested with jurisdiction to prevent and restrain violation of this part or of any regulation effected thereunder.

(d) [Fine.] Every person who violates this part or any rule or regulation promulgated thereunder shall be fined not less than \$50 nor more than \$500. Each day during which any of the above violations occur shall constitute a separate offense.

(e) Penalties concurrent and alternative. The penalties and remedies prescribed in this section with respect to any violation mentioned in this section shall be concurrent and alternative and neither singly nor combined shall the same be exclusive and either singly or combined the same shall be cumulative with any and

all other civil, criminal or alternative rights, remedies, or penalties provided or allowed by law with respect to any violations.]

(b) In respect of violations or complaints of violation of this part or rules adopted by the department pursuant thereto, the department shall have all the rights and powers conferred upon it by section 147-2, with respect to violations or complaints of violation of part I or rules adopted by the department pursuant thereto; and all remedies, procedures, or actions contained in section 147-2 for violations or complaints of violation of part I or rules adopted by the department thereunder, shall be severally and respectively conferred, granted, practiced, and exercised for violations or complaints of violation of the provisions of this part or rules adopted by the department pursuant thereto."

SECTION 6. Section 147-36, Hawaii Revised Statutes, is amended to read as follows:

**"§147-36 Licenses.** No person shall act as a commercial exporter without having obtained a license as provided hereunder. Every person before acting as a commercial exporter as herein defined shall file an application with the department [of agriculture] for a license to transact the business of a commercial exporter and the application shall be accompanied by the license fee [herein provided.] as specified by the rules of the department.

The application shall in each case state the class or classes of flowers and foliage the applicant proposes to handle, the full name and address of the person or firm applying for the license, and if the applicant is a firm, exchange, association, or corporation, the full name of each member of the firm, or the names of the officers of the exchange, association, or corporation. The application shall further state the principal business address of the applicant in the State and elsewhere and the names of the persons authorized to receive and accept services of summons and legal notices of all kinds for the applicant. The applicant shall further satisfy the department of his or its good character, responsibility and good faith in seeking to carry on the business stated in the application.

[For filing the application herein described, each applicant shall pay a license fee of \$10 for each year.]

Should any commercial exporter refuse, fail, or neglect to apply for the renewal of a preexisting license within thirty days after the expiration thereof, a penalty of forty per cent shall apply to and be added to the [original fee set forth above,] license fee, and shall be paid by the applicant before the renewal license may be issued. All licenses expire one year from the date of the issuance of the license."

SECTION 7. Section 147-37, Hawaii Revised Statutes, is amended to read as follows:

**"§147-37 Duties of department; violations; proceedings; penalties.** (a) It shall be the duty of the department [of agriculture] to administer and enforce the provisions of this part and [any] rules [or regulations] promulgated thereunder.

(b) Civil action. Any person who violates any provision of this part or any rule or regulation promulgated thereunder shall be liable for damages in civil action brought by the department in the name of the State for a penalty in an amount not to

exceed the sum of \$500 for each and every violation. Any money recovered by the department under this provision shall be deposited with the state director of finance to the credit of the general fund.

(c) Nuisance may be enjoined, abated. Violation of this part or of any regulation promulgated thereunder is declared a public nuisance and may be enjoined or abated as such by the department or the attorney general in a suit filed and prosecuted in the circuit wherein the public nuisance is committed. The several circuit courts are hereby vested with jurisdiction to prevent and restrain violation of this part or of any regulation effected thereunder.

(d) [Fine.] Every person who violates any provision of this part or of any rule or regulation promulgated thereunder shall be punished by a fine of not less than \$50, nor more than \$500. Each day during which any of the above violations occur shall constitute a separate offense.

(e) Penalties concurrent and alternative. The penalties and remedies prescribed in this section with respect to any violation mentioned in this section shall be concurrent and alternative and neither singly nor combined shall the same be exclusive and either singly or combined the same shall be cumulative with any and all other civil, criminal or alternative rights, remedies or penalties provided or allowed by law with respect to any violations.]

(b) In respect of violations or complaints of violation of this part or rules adopted by the department pursuant thereto, the department shall have all the rights and powers conferred upon it by section 147-2, with respect to violations or complaints of violation of part I or rules adopted by the department pursuant thereto; and all remedies, procedures, or actions contained in section 147-2 for violations or complaints of violation of part I or rules adopted by the department thereunder, shall be severally and respectively conferred, granted, practiced, and exercised for violations or complaints of violation of the provisions of this part or rules adopted by the department pursuant thereto.

SECTION 8. Section 147-51, Hawaii Revised Statutes, is amended to read as follows:

**“§147-51 Definitions.** For the purpose of this part, unless otherwise required by the context:

“Department” means the department of agriculture;

“Process” means to can, preserve, freeze, pickle, dry, or otherwise prepare, with or without any added ingredients;

“Food product” or “product” means any and all fruits, vegetables, [and] nuts, and coffee, or part or parts thereof, produced and processed within the State, and also any and all fish and fishery products processed within the State.”

SECTION 9. Section 147-62, Hawaii Revised Statutes, is amended to read as follows:

**“§147-62 Misrepresentation as to grade, etc., penalties.** (a) If any quantity of any food product has been inspected and a certificate issued hereunder showing the grade, classification, quality, or condition thereof, no person shall represent that the grade, classification, quality, or condition of the product at the time and place of the inspection was other than as shown by the certificate.

(b) If any lot or lots of any food product has been inspected and a certificate issued hereunder showing the grade, classification, quality, or condition of the lot or lots, no person shall represent that the certificate is descriptive of or relates to any other lot or lots of food products not inspected hereunder and not covered by the certificate.

(c) Whenever any standard for the grading or classification of any food product becomes effective under this part, and any word or words, figure, or mark or marks, or letter, has been established and adopted by the department [of agriculture] to indicate the grade or quality of the food product contained in any package or container, it shall be unlawful for any person to use any of the words, letters, figures, or marks, in connection with any package or container, to represent the grade or quality of the food product contained therein, to be sold or offered for sale, if the product does not meet the requirements of the grade indicated by the marking.

(d) Whenever any standard for the grading or classification of any food product becomes effective under this part, and any label has been established and adopted by the department to indicate the grade, quality or condition of the food product contained in any package or container, it shall be unlawful for any person to use any label, in connection with any package or container, unless authorized so to use it by, or under the rules [and regulations] prescribed by, the department.

[(e) Any person violating this section shall be fined not more than \$500 or imprisoned not more than six months or both.]”

SECTION 10. Section 147-63, Hawaii Revised Statutes, is amended to read as follows:

**“§147-63 Remedies, extension of other powers.** In respect of violations or complaints of violation of this part or [any] rules [or regulations made] adopted by the department [of agriculture] pursuant thereto, the department shall have all the rights and powers conferred upon it by section 147-2, with respect to violations or complaints of violation of part I or [any] rules [or regulations made] adopted by the department pursuant thereto; and all remedies, procedures, or actions contained in section 147-2[, except criminal penalties,] for violations or complaints of violation of part I or [any] rules [or regulations made] adopted by the [board] department thereunder, shall be severally and respectively conferred, granted, practiced, and exercised for violations or complaints of violation of the provisions of this part or [any] rules [or regulations made] adopted by the department pursuant thereto.”

SECTION 11. Statutory material to be repealed is bracketed. New material is underscored.

SECTION 12. This Act shall take effect upon its approval, except that the license fee for commercial exporters of flowers and foliage shall remain \$10 for 180 days after approval or until the fee can be set by rules of the department of agriculture, whichever comes first.

(Approved June 11, 1983.)