

ACT 133

H.B. NO. 111

A Bill for an Act Relating to Plant and Non-Domestic Animal Quarantine.  
*Be It Enacted by the Legislature of the State of Hawaii:*

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

**“§150A-5 Conditions of importation.** The importation into the State of any of the following articles, viz., nursery-stock, tree, shrub, herb, vine, cut-flower, cutting, graft, scion, bud, seed, leaf, root, or rhizome; nut, fruit, or vegetable; grain, cereal, or legume in the natural or raw state; moss, hay, straw, dry-grass, or other forage; unmanufactured log, limb, or timber, or any other plant-growth or plant-product, unprocessed or in the raw state; soil[.]; [live bird, reptile,] bacteria, fungus, [nematode,] or virus[.]; live bird, reptile, nematode, insect, or any other animal in any stage of development (that is in addition to the so-called domestic animal, the quarantine of which is provided for in [other sections] chapter 142); box, vehicle, baggage, [barrel, or crate] or any other container in which such articles have been transported [or contained] or any packing material used in connection therewith[, into the State,] shall be made [and conducted] in the manner [and subject to the conditions] hereinafter set forth:

- (1) Notification of arrival. Any person[,] who receives for transport[,]  
or brings or causes to be brought to the State[,]  
as freight, air freight, baggage, or otherwise, for the purpose of debarkation or entry therein, or as ship's stores, any of the foregoing articles [enumerated], shall, immediately upon the arrival thereof, notify the department, in writing, of the arrival, giving the waybill number, container number, name and address of the consignor, name and address of the consignee or [his responsible] the consignee's agent in the State, marks, number of packages, description of contents of each package, port at which laden, and any other information that may be necessary to locate or identify the same, and shall hold such articles [on] at the [dock,] pier, [wharf,] airport, [air terminal,] or any other [places,] place where they are first received or discharged, in such a manner that they will not spread or be likely to spread any infestation or infection of insects or diseases that may be present until inspection and examination can be made by the inspector[,]  
to determine whether or not any article, or any portion thereof, is infested[,]  
or infected with or contains any pest. In addition, [by rules and regulations,] the department by rules shall designate restricted articles that shall require a permit [to be obtained] from

the department in advance of importation. The restricted articles shall include, but not be limited to, fungi, bacteria, virus, or living insects. Failure to obtain [such permits] the permit in advance shall result in the articles being refused entry, [or] confiscated, or destroyed. Any expense or loss in connection therewith shall be borne by the owner or [his responsible] the owner's agent [in the State].

(2) Individual passengers, officers, and crew.

- (A) It shall be the responsibility of the transportation company to distribute, prior to arrival, the State of Hawaii plant and animal declaration [forms] form to each passenger, officer, and crew member of any aircraft or vessel originating [from] in the continental United States or its [possession,] possessions or from any other [areas] area not under the jurisdiction of the appropriate federal agency [prior to arrival] in order that the passenger, officer [and], or crew member can comply with the directions and [requirement] requirements appearing thereon. Any [adult, guardian of minor or transiting] passenger, officer [and], or crew member bringing or causing to be brought for entry into the State the [items] articles listed on the form shall complete the declaration. Any person who defaces the declaration form required under this section, gives false information, [or] fails to declare restricted [materials] articles in his possession or [luggage] baggage, or fails to declare in cargo manifests shall be in violation of this section.
- (B) [Such completed] Completed forms shall be collected by the transportation company and be delivered, immediately upon arrival, to the inspector at the first airport or seaport of arrival.

- (3) Plant and animal declaration form. [Such forms] The form will include directions for declaring domestic and other animals cited in chapter 142, in addition to the articles enumerated in this chapter.
- (4) Labels. Each [and every case, box, package, crate, bale, or bundle containing] container in which any of the above-mentioned articles [above enumerated,] are imported into the State[,] shall [have] be plainly and legibly marked [thereon], in a conspicuous manner and place, with the name and address of the shipper or owner forwarding or shipping the same, the name or mark of the person to whom the same is forwarded or shipped or [his responsible] the person's agent, the name of the country, state, or territory and locality therein where the product was grown or produced, and a statement of the contents of the [package.] container. Upon failure to comply with this paragraph, the importer or carrier shall be liable to suffer the penalty for the violation of this section.
- (5) Authority to inspect. Whenever [he] the inspector has good cause to believe that the provisions of this chapter are being violated, the inspector may:
- (A) Enter any aircraft, [ship,] vessel, or other carrier[,] at any time after its arrival within the boundaries of the State, whether [offport,] offshore, at the [dock,] pier, [wharf,] or at the airport [or air terminal].
- (B) Enter into or upon any [dock,] pier, [or wharf,] warehouse [or depot], airport [or air terminal], or any other place in the

State[,] where any of the above-mentioned articles are moved or stored, for the purpose of ascertaining, by inspection and examination, whether or not any of the [items listed in this section] articles is infested or infected with any pest or disease or contaminated with soil[,] or contains prohibited plants or animals.

- (C) Inspect any baggage [and] or personal effects of disembarking passengers, officers, and crew members [of crews] on aircraft[, ships,] or vessels[, or other surface craft] arriving [into] in the State to ascertain if they contain any of the articles or pests enumerated in this chapter.

Such baggage inspection shall be made at the discretion of the inspector, on the [dock] pier, [or on the ship,] vessel, [other surface craft] or aircraft or in any quarantine or inspection area. No baggage or other personal effects of the passengers or crew members shall be released until said effects have been passed.

Whenever [he] the inspector has good cause to believe that the provisions of this chapter are being violated, the inspector may require that any box, [bale, crate, bundle,] package, [truck, bag,] suitcase, or any other container carried as ship's stores, cargo or otherwise[,] by any [ship,] vessel[, other surface craft] or aircraft[,] moving between the continental United States and Hawaii[, or between the Hawaiian Islands, be opened for inspection to determine whether any article or pest prohibited by this chapter or by [regulations] rules promulgated pursuant thereto is present. If any prohibited article or any pest or any plant, fruit, or vegetable infested with plant pests is found, the department may order the return of the article to the place of origin or otherwise dispose of it or such part thereof as necessary to comply with this chapter. Any expense or loss in connection therewith shall be borne by the owner or the owner's agent.

[Any expense or loss in connection therewith shall be borne by the owner or his responsible agent in the State.]

- (6) Request for importation and inspection. In addition to requirements of the United States customs authorities concerning invoices or other formalities incident to importations into the State, the importer shall be required to file a written statement with the department, signed by [himself] the importer or [his responsible] the importer's agent [in the State], setting forth [his] the importer's desire to import certain of the above-mentioned articles [above enumerated,] into the State[,] and giving the following additional information: the kind (scientific name), quantity, and description [of same]; the locality where same were grown or produced; the 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 prior to importation or have been specifically approved for importation by the board; the port from which the same were last shipped; the name of the shipper; and the name of the consignee [thereof]. The statement shall also contain:
- (A) A request that the department, by its duly authorized agent, examine the articles described;
- (B) An agreement by the importer to be responsible for all costs, charges, or expenses; and

- (C) 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 provided [for], if any treatment is [adjudged] deemed necessary.

Failure or refusal to file a statement, including the agreement and waiver, shall be held to be a violation of this section and may, in the discretion of the department, [give] be sufficient cause for refusing to permit the entry of the articles into the State.

- (7) Place of inspection. If, in the judgment of the inspector, it is deemed necessary or advisable to move any of the above-mentioned articles [above enumerated], or any portion thereof, to a place more suitable for inspection than the [dock,] pier, [wharf,] airport, [air terminal, depot] or any other place where they are first received or discharged, [authority therefor is granted,] the inspector is authorized to do so. [and all] All costs and expenses incident to the movement and transportation of the articles to such place shall be borne by the importer or [his responsible] the importer's agent [in the State owning or having charge thereof].
- (8) Disinfection or quarantine. If, upon inspection, any article so received or brought [to] into the State for the purpose of debarkation or entry therein is found to be infested or infected[,], or there is reasonable cause to presume that it is infested or infected and the infestation or infection can, in the judgment of the inspector, be eradicated, a treatment shall be given such article. The treatment shall be at the expense of the owner or [his] the owner's agent, and the treatment shall be as prescribed by the department. The article shall be held in quarantine at the expense of the owner or [his responsible] the owner's agent[,], at a satisfactory place approved by the department[,], for a sufficient length of time to determine that eradication has been accomplished. If the infestation or infection is of such nature or extent that it cannot be effectively and completely eradicated [in the manner described above], or if it is a potentially destructive pest[,], or it is not widespread in the State, or after treatment it is determined that the infestation or infection is not completely eradicated, or if the owner or the owner's agent refuses to allow the article to be treated or to be responsible for the cost of treatment and quarantine, the article, or any portion thereof, together with all packing and containers, may, at the discretion of the inspector, be destroyed or sent out of the State at the expense of the owner or [his responsible] the owner's agent [in the State]. Such destruction or exclusion shall not be made the basis of a claim against the department or the inspector for damage or loss incurred.
- (9) Disposition. Upon completion of inspection, either [At] at the time of arrival[,], or at any time thereafter[,], should any article be held for inspection, treatment or quarantine, the inspector shall [upon completion of inspection,] affix to the article or the container or to the delivery order in a conspicuous place thereon, a tag, label, or stamp to indicate that the article has been inspected and passed. This action shall [in effect be] constitute a permit to bring the article into the State.
- [(10) What constitutes importation. The landing of any of the articles for the purpose of inspection or quarantine is not, nor shall it be construed to be, an importation in the sense of giving to the articles

so landed any status, or the owner thereof any right or privilege, incident to articles which have actually been imported into the State; but in legal effect the articles so landed for the purpose of inspection shall be construed to be still without the State seeking entry thereinto, and shall not, in whole or in part, be considered suitable for importation into the State unless a tag, label, or stamp has been affixed thereon by the inspector as provided in section 150A-5(9).

- (11) Exceptions to right to import. Nothing in this chapter contained shall permit the importation of any animal or article, from any particular place, if the same, or any of them, has, by special rule or regulation of the department been prohibited.
- (12) (10) Ports of entry. None of the articles [enumerated] mentioned in this section shall be allowed entry into the State except through the [air and sea ports] airports and seaports in the State designated and approved by the board.
- [(13)] Enforcement; citation and summons; penalty. Any officer or employee of the department, authorized and designated by the board to enforce the provisions of this chapter, and all rules and regulations promulgated and adopted by the department pursuant thereto, may issue a citation to any person for violation of any provision of this chapter or of any rule or regulation promulgated and adopted pursuant thereto, and issue to him a summons summoning him to appear at a certain place at a time within seven days of such citation, to answer the charges against him.
  - (A) Form of citation and summons. There shall be printed a form of citation and summons for use in citing violators of this chapter and regulations promulgated pursuant thereto. The form and contents of such citation and summons shall be as adopted or prescribed by the district courts.  
 In every case when a citation and summons are issued the original of the same shall be given to the accused; provided that, the district courts may prescribe the issuance to the accused of a carbon copy of the citation and summons and provide for the disposition of the original and any other copies. Every citation and summons shall be consecutively numbered and each carbon copy shall be consecutively numbered and each carbon copy shall bear the number of its respective original.
  - (B) Administration of oath. When a complaint is made to any prosecuting officer of the violation of the provisions of this chapter or the rules and regulations promulgated and adopted pursuant thereto, the officer or employee who issued the citation and summons shall subscribe to the complaint under oath.
  - (C) Penalty. Any person who violates the provisions of section 150A-6(3) or any person who owns or intentionally transports or harbors any snake or other prohibited animal seized under section 150A-7(b) shall be fined not more than \$1,000 or imprisoned not more than one year, or both; provided that a person who voluntarily surrenders any prohibited snake or other prohibited animal prior to the initiation of seizure action by the department shall not be subject to this penalty. Any

person who violates any other provision of this chapter shall be fined not more than \$500 or imprisoned not more than six months, or both.]”

SECTION 2. Section 150A-6, Hawaii Revised Statutes, is amended to read as follows:

“§150A-6 Soil, [snakes, injurious insects,] plants, animals, etc., importation or possession prohibited. (a) [All persons are prohibited from receiving for transportation, bringing, or causing to be brought] No person shall transport, receive for transport, or cause to be transported to the State, for the purpose of debarkation or entry thereinto, any of the following [named articles]:

- (1) Soil, provided that limited quantities of soil may be imported into the State for experimental or other scientific purposes[,] under permit with conditions prescribed by the department.
- (2) Rocks, plants, plant products or any [commodity] article with soil adhering thereto.
- (3) Any live snake, flying fox, fruit bat, Gila monster, injurious insect, or eels of the order Anguilliformes, or any other animal in any stage of development that is detrimental or potentially harmful to agriculture [or], horticulture [or], animal or public health, or natural resources, including native biota, or has an adverse effect on the environment as determined by the board; provided that a government agency may bring into and maintain in the State not more than two live, nonvenomous snakes of the male sex solely for the purpose of exhibition in a [public zoological park,] government zoo, but only after the board is presented with satisfactory evidence that the sex of the snakes was established to be male prior to the shipment, and after the board gives written approval conditioned upon such terms as the board may deem necessary, which terms shall include the continuing supervision and control by the board and shall provide that the board may determine the manner in which such snakes shall be disposed of or destroyed. In case of the death of one or both snakes, the government agency may import and maintain replacements subject to the above conditions.
- (4) The board shall maintain either a list of animals and plants which may be imported into the State or a list of animals and plants which are prohibited entry into the State.

(b) No person shall possess, propagate, or harbor any plant or animal included on the list of prohibited plants and animals maintained by the board under this section.”

SECTION 3. Section 150A-7, Hawaii Revised Statutes, is amended to read as follows:

“[ [§150A-7[ ] ] **Disposition.** (a) Any plant, plant product, or any [commodity] article contaminated with soil, which may be brought to the State contrary to section 150A-6, shall be refused admittance, and the same may, in the discretion of the inspector, be seized and treated, destroyed, or excluded at the expense of the owner or [his responsible] the owner’s agent [in the State].

(b) Any [or all] living [creatures] creature mentioned in section 150A-6 brought to or possessed in the State shall constitute contraband and shall be seized immediately upon discovery wherever found, and be destroyed, donated to a [governmental] government zoo, or sent out of the State, at the discretion of the department[; any]. Any expense or loss in connection therewith [to] shall be

borne by the owner or [his responsible] the owner's agent. The foregoing shall not apply to any snake which is brought into the State by a [governmental] government agency solely for the purpose of exhibition in a [public zoological park] government zoo pursuant to section 150A-6(3).

(c) Whenever any living creature introduced or admitted under rules [and regulations] of the department escapes, or is found to be free from confinement, the department shall confiscate[,] or capture [or have] it and [its] any progeny [captured] at the expense of the owner. The department may destroy the creature, donate it to a government zoo, or send it out of the State after five days at the discretion of the department. Any expense or loss in connection therewith shall be borne by the owner or [his responsible] the owner's agent."

SECTION 4. Chapter 150A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§150A- What constitutes importation.** (a) The landing of any article for the purpose of inspection or quarantine is not, nor shall it be construed to be, an importation in the sense of giving the article any status, or the owner any right incident to articles which have actually been imported into the State.

(b) In legal effect, articles landed for the purpose of inspection or quarantine shall be construed to be still without the State seeking entry, and shall not, in whole or in part, be considered suitable for importation into the State unless a tag, label, or stamp has been affixed to the article or its container by the inspector as provided in section 150A-5(9)."

SECTION 5. Chapter 150A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§150A- Exceptions to the right to import.** Nothing in this chapter shall permit the importation of any animal or article if the same, or any of them, has, by rule of the department been prohibited."

SECTION 6. Chapter 150A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§150A- Enforcement.** Inspectors shall enforce the provisions of this chapter and related rules promulgated by the department.

Inspectors shall be provided with suitable badges or insignia of office by the department, and shall have power to serve and execute warrants in all matters relating to the quarantine laws, to issue a citation for any violation of this chapter and related rules, and to seize contraband articles throughout the State."

SECTION 7. Chapter 150A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§150A- Citation and summons.** There shall be printed a form of citation and summons for use in citing violators warning the person to appear and answer the charge against the person at a certain place and at a time within seven days after the citation. The citation and summons shall be so designed to include all necessary information to make it valid and legal within the laws and rules of the State. The form and contents of such citation and summons shall be adopted or prescribed by the district courts.

In every case when a citation and summons is issued, the original of the same shall be given to the accused; provided that the district courts may

prescribe the issuance to the accused of a carbon copy of the citation and summons and provide for the disposition of the original and any other copies.

Every citation and summons shall be consecutively numbered and each carbon copy shall bear the number of its original."

SECTION 8. Chapter 150A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§150A- Administration of oath.** When a complaint is made to any prosecuting officer of the violation of the provisions of this chapter or the rules promulgated and adopted pursuant thereto, the inspector who issued the citation and summons shall subscribe to the complaint under oath."

SECTION 9. Chapter 150A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§150A- Penalty.** Any person who violates the provisions of section 150A-6(3) or any person who owns or intentionally transports, possesses, or harbors any snake or other prohibited animal seized under section 150A-7(b) shall be fined not more than \$1,000 or imprisoned not more than one year, or both; provided that a person who voluntarily surrenders any prohibited snake or other prohibited animal prior to the initiation of any seizure action by the department shall not be subject to this penalty. Any person who violates any other provision of this chapter shall be fined not more than \$500 or imprisoned not more than six months, or both."

SECTION 10. Chapter 150A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§150A- Failure to obey summons.** Any person who fails to appear at the place and time specified in the citation and summons issued to that person by the inspector upon the person's citation for violation of the quarantine laws or rules shall be guilty of a misdemeanor and, on conviction, fined not more than \$500 or imprisoned not more than six months, or both.

If any person fails to comply with a citation and summons issued to him, the inspector shall cause a complaint to be entered against the person and secure the issuance of a warrant for that person's arrest.

When a complaint is made to any prosecuting officer of the violation of any quarantine law or any rule promulgated thereunder, the inspector who issued the complaint and summons shall subscribe to it under oath."

SECTION 11. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 12. This Act shall take effect upon its approval.

(Approved May 28, 1985.)

#### Note

1. Edited pursuant to HRS §23G-16.5.