

ACT 243

S.B. NO. 2482

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-2, Hawaii Revised Statutes, is amended by amending the definition of “import” and adding the definition of “passed” to read:

“ “Import” means shipment to the State for the purpose of entry from any point outside of the State.

“Passed” means the clearance status for entry given an article for import after inspection and quarantine requirements have been met.”

SECTION 2. Section 105A-5,¹ 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; bacteria, fungus, 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 chapter 142); box, vehicle, baggage, or any other container in which such articles have been transported or any packing material used in connection therewith shall be made in the manner 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, 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 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 at the pier, airport, or any other 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, the department by rules shall designate restricted articles that shall require a permit 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 the permit in advance [shall result in the articles being refused entry, confiscated, or destroyed. Any expense or loss in connection therewith shall be borne by the owner or the owner’s agent.] is a violation of this section.
- (2) Individual passengers, officers, and crew.

- (A) It shall be the responsibility of the transportation company to distribute, prior to [arrival] the debarkation of passengers and baggage, the State of Hawaii plant and animal declaration form to each passenger, officer, and crew member of any aircraft or vessel originating in the continental United States or its possessions or from any other area not under the jurisdiction of the appropriate federal agency in order that the passenger, officer, or crew member can comply with the directions and requirements appearing thereon. Any passenger, officer, or crew member bringing or causing to be brought for entry into the State the articles listed on the form shall complete the declaration. Any person who defaces the declaration form required under this section, gives false information, fails to declare restricted articles in the person's possession or baggage, or fails to declare in cargo manifests [shall be] is in violation of this section.
- (B) 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. Failure to distribute or collect declaration forms or to immediately deliver completed forms is a violation of this section.
- (3) Plant and animal declaration form. The form [will] shall include directions for declaring domestic and other animals cited in chapter 142, in addition to the articles enumerated in this chapter.
- (4) Labels. Each container in which any of the above-mentioned articles are imported into the State shall be plainly and legibly marked, 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 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 container. Upon failure to comply with this paragraph, the importer or carrier [shall be liable to suffer the penalty for the] is in violation of this section.
- (5) Authority to inspect. Whenever the inspector has good cause to believe that the provisions of this chapter are being violated, the inspector may:
 - (A) Enter and inspect any aircraft, vessel, or other carrier at any time after its arrival within the boundaries of the State, whether offshore, at the pier, or at the airport[.], for the purpose of determining whether any of the articles or pests enumerated in this chapter or rules adopted thereto, is present.
 - (B) Enter into or upon any pier, warehouse, airport, 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 articles is infested or infected with any pest or disease or contaminated with soil or contains prohibited plants or animals.
 - (C) Inspect any baggage or personal effects of disembarking passengers, officers, and crew members on aircraft or vessels arriving in the State to ascertain if they contain any of the articles or pests enumerated in this chapter. No baggage or other personal effects of the passengers or crew members shall be released until the baggage or effects have been passed.

[Such baggage] Baggage or cargo inspection shall be made at the discretion of the inspector, on the pier, vessel, 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 the inspector has good cause to believe that the provisions of this chapter are being violated, the inspector may require that any box, package, suitcase, or any other container carried as ship's stores, cargo, or otherwise by any vessel 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 rules [promulgated] adopted pursuant thereto is present. [If It is a violation of this section 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].

- (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 the importer or the importer's agent, setting forth the importer's desire to import certain of the above-mentioned articles into the State and giving the following additional information: the kind (scientific name), quantity, and description; 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. 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, if any treatment is deemed necessary.
- Failure or refusal to file a statement, including the agreement and waiver, [shall be held to be] is a violation of this section and may, in the discretion of the department, 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, or any portion thereof, to a place more suitable for inspection than the pier, airport, or any other place where they are first received or discharged, the inspector is authorized to do so. All costs and expenses incident to the movement and transportation of the articles to such place shall be borne by the importer or the importer's agent.

- (8) Disinfection or quarantine. If, upon inspection, any article so received or brought 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 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 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, 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 the owner's agent. 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 the time of arrival or at any time thereafter should any article be held for inspection, treatment, or quarantine, the inspector shall 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 constitute a permit to bring the article into the State.
- (10) Ports of entry. None of the articles mentioned in this section shall be allowed entry into the State except through the airports and seaports in the State designated and approved by the board."

SECTION 3. Section 150A-5.5, Hawaii Revised Statutes, is amended to read as follows:

"[§150A-5.5] 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] passed and allowed 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, or its delivery order by the inspector as provided in section 150A-5(9)."

SECTION 4. Section 150A-6, Hawaii Revised Statutes, is amended to read as follows:

"§150A-6 Soil, plants, animals, etc., importation or possession prohibited.

(a) 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:

- (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 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, horticulture, 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 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) Any live or dead honey bees, or used bee equipment that is not certified by the department to be free of pests; provided that nothing herein shall prohibit the importation of bee semen.
- (5) The board shall maintain [either] a list of conditionally approved animals and microorganisms which require a permit for import into the State, a list of restricted animals and [plants] microorganisms which [may be imported] require a permit for both import into the State [or] and possession, and a list of animals and [plants] microorganisms which are prohibited entry into the State. The conditionally approved and restricted animals and microorganisms shall be imported only by permit issued pursuant to rules and any violation of the conditions listed on the permit is a violation of this section. Any other animal or microorganism that is not on the conditionally approved, restricted, or prohibited lists is prohibited until the board's review and determination for placement on one of these lists.
- (6) The board shall also maintain a list of restricted plants and a list of prohibited plants. Restricted plants may not be imported into the State without a permit issued pursuant to rules and any violation of the conditions listed on the permit is a violation of this section.
 - (b) No person shall possess, propagate, sell, transfer, or harbor any plant [or], animal, or microorganism included on the list or lists of prohibited plants [and], animals, and microorganisms maintained by the board¹ under this section[.], except as allowed by the board upon determination that the species:
 - (1) Was initially permitted entry and later prohibited entry into the State; or
 - (2) Was continually prohibited but was unlawfully introduced and is currently established in the State; and
 - (3) Is not significantly harmful to agriculture, horticulture, public health, and the environment. Under the foregoing circumstances, the board may permit possession of the individual plant, animal, or microorganism through its registration with the department while still prohibiting the same species of plant, animal, or microorganism from importation, propagation, transfer, and sale."

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SECTION 5. Section 150A-7, Hawaii Revised Statutes, is amended to read as follows:

“§150A-7 Disposition. (a) [Any] It is a violation of sections 150A-5 and 150A-6 to bring into the State contrary to those sections any plant, plant product, animal, microorganism, or any article infested with pests or contaminated with soil, which may be brought to the State contrary to section 150A-6,] and the same 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 the owner’s agent.

(b) [Any] It is a violation of section 150A-6 to bring to or possess in the State any living creature [mentioned in section 150A-6 brought to or possessed in the State] that is mentioned in that section or in the lists maintained by the board if the creature is prohibited, or restricted and without a permit issued by the department, and such a creature shall constitute contraband and shall be seized immediately upon discovery whenever¹ found,¹ and be destroyed, donated to a government zoo, or sent out of the State, at the discretion of the department. Any expense or loss in connection therewith shall be borne by the owner or the owner’s agent. The foregoing shall not apply to any snake which is brought into the State by a government agency solely for the purpose of exhibition in a government zoo pursuant to section 150A-6(3).

(c) Whenever any living creature introduced or admitted under rules of the department escapes, or is found to be free from confinement, the department [shall] may confiscate or capture it and any progeny 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 the owner’s agent.”

SECTION 6. Section 150A-10, Hawaii Revised Statutes, is amended to read as follows:

“[§150A-10] Advisory committee on plants and animals. There shall be an advisory committee on plants and animals composed of the chairman of the board or the chairman’s representative who shall be chairman of the committee, the chairman of the board of land and natural resources, the director of the office of environmental quality control, the director of department of health or their designees, and five other members, with expertise in plants, animals, or microorganisms, and who, by virtue of their vocation or avocation, also are thoroughly conversant with modern ecological principles and the variety of problems involved in the adequate protection of our natural resources. The latter five members shall be chosen by the chairman. The committee shall advise and assist the department in developing or revising laws and regulations to carry out and effectuate the purposes of this chapter and in advising the department in problems relating to the introduction, confinement, or release of plants, animals, and microorganisms.

The chairman may create ad hoc or permanent subcommittees, as needed.”

SECTION 7. Section 150A-14, Hawaii Revised Statutes, is amended to read as follows:

“[§150A-14] Penalty. (a) Any person who violates [the provisions of section 150A-6(3)] any provision of this chapter other than section 150A-5(2)(B)

or any rule adopted under this chapter or any person or organization who owns or intentionally transports, possesses, [or] harbors, propagates, sells, transfers, or causes the importation of 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.] shall be guilty of a misdemeanor.

(b) Any transportation company that violates section 150A-5(2)(B) shall be guilty of a petty misdemeanor.

(c) Any person or importer who violates this chapter more than three times within a five-year period or whose violation involves a plant, animal, or microorganism on the prohibited list or the restricted list without a permit shall be guilty of a class C felony.

(d) For the purposes of this section:

(1) Convictions under two or more counts of an indictment or complaint shall be considered a single conviction without regard to when the convictions occurred or when the individual offenses were committed;

(2) A conviction occurs on the date judgment is entered.

(e) Whenever a court sentences a person or importer pursuant to subsection (a) or (c) for an offense which has resulted in the escape or establishment of any pest and caused the department to initiate a program to capture, control or eradicate that pest, the court shall also require that the person or importer pay to the state general fund an amount of money to be determined in the discretion of the court upon advice of the department, based upon the cost of the development and implementation of the program.

(f) In addition to the penalties in subsection (a) or (c) and the payment under subsection (e), the department may, at its discretion, refuse entry, confiscate, or destroy any prohibited articles or restricted articles without a permit issued by the department, brought to the State or order the return of any plant, fruit, vegetable, or any other article infested with pests to its place of origin or otherwise dispose of it or such part thereof as may be necessary to comply with this chapter. Any expense or loss in connection therewith shall be borne by the owner or the owner's agent.

(g) Any person who voluntarily surrenders any prohibited snake, other prohibited animal, or restricted animal without a permit issued by the department, prior to the initiation of any seizure action by the department shall be exempt from the penalties of this section."

SECTION 8. Statutory material to be repealed is bracketed. New statutory material is underscored.

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

(Approved June 25, 1990.)

Note

1. So in original.