

ACT 229

H.B. NO. 2597

A Bill for an Act Relating to Importation.

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

SECTION 1. The legislature finds that the State must be vigilant in preserving its environment, agriculture, and beauty against the unwelcome intrusion of destructive pests. Certain animals have the ability to severely damage Hawaii's natural environment. For example, Guam is suffering greatly from the introduction of the brown tree snake. In order to prevent brown tree snakes and other destructive pests from entering Hawaii, the law must provide for better procedures and stronger penalties to deter the importation of undesirable creatures. This bill, therefore, provides for larger fines and more comprehensive procedures.

SECTION 2. Chapter 150A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§150A- Entry of private property for enforcement. Whenever any member of the department of agriculture deems it necessary for the protection of animal or public health, agriculture, or the environment, to enter any land, building, vessel or aircraft for the purpose of seizing, capturing, confiscating or removing any living creature that is prohibited or restricted and without a permit, the member may make complaint to the district judge in whose circuit the alleged violation is occurring, and the district judge may thereupon issue a warrant, directed to any police officer of the circuit, commanding the police officer to take sufficient aid, and being accompanied by the member of the department, to go to the place described in the complaint, and to seize, capture, confiscate or remove, under directions of the member, the prohibited or restricted creature."

SECTION 3. 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; 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 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 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] All passengers, officers, and crew [member] members, whether or not they are bringing or causing to be brought for entry into the State the articles listed on the form, shall complete the declaration[.], except that one adult member of a family may complete the declaration for other family members. 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 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.

(C) It shall be the responsibility of the officers and crew of an 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 to immediately report all sightings of any plants and animals to the Plant Quarantine Branch. Failure to comply with this requirement is a violation of this section.

(3) Plant and animal declaration form. The form 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 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.

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.

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 adopted pursuant thereto is present. 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.

- (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, 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 4. Section 150A-7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) It is a violation of section 150A-6 to bring to or possess in the State any living creature 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 whenever found, 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).] 150A-6(a)(3).”

SECTION 5. Section 150A-14, Hawaii Revised Statutes, is amended to read as follows:

“**§150A-14 Penalty.** (a) Any person who violates any provision of this chapter other than sections 150A-5(2)(B), 150A-5(2)(C), 150A-6(a)(3) and 150A-6(a)(4) or who violates any rule adopted under this chapter other than those rules involving a plant, animal, or microorganism [on the] that is prohibited [list] or [the] restricted [list] without a permit shall be guilty of a [violation] misdemeanor and fined not less than \$100 [nor more than \$1,000]. The provisions of section 706-640 notwithstanding, the maximum fine shall be \$10,000. For a second offense committed within five years of a prior offense, the person or organization shall be fined not less than \$500 and not more than \$25,000.

(b) Any transportation company that violates section 150A-5(2)(B) or section 150A-5(2)(C) shall be guilty of a [petty] misdemeanor[.] and fined not less than \$100. The provisions of section 706-640 notwithstanding, the maximum fine shall be \$10,000. For a second offense committed within five years of a prior offense, the company may be fined not less than \$500 and not more than \$25,000.

(c) Any person or organization that violates sections 150A-6(a)(3) or 150A-6(a)(4), or [who] owns or intentionally transports, possesses, harbors, propagates, sells, transfers, or causes the importation of any snake or other prohibited animal seized under section 150A-7(b), [or any person or importer who violates this chapter more than once] or whose violation involves a plant, animal, or microorganism [on the] that is prohibited [list] or [the] restricted [list] without a permit shall be guilty of a [violation] misdemeanor and fined not less than [\$1,000 nor more than \$10,000.] \$500. The provisions of section 706-640 notwithstanding, the maximum fine shall be \$25,000.

[(d) For the purposes of this section:

(1) Convictions under two or more citations issued in connection with the same course of conduct or episode shall be considered a single conviction; and

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

(e) [(d) Whenever a court sentences a person[, or organization[, 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] organization 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)] (e) [In addition to the penalties in subsection (a) or (c) and the payment under subsection (e), the] The department may, at its discretion, refuse entry, confiscate, or destroy any prohibited articles or restricted articles [without

a permit issued by the department,] that are brought [to] into the State without a permit issued by the department, 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)] (f) Any person [who] or organization that voluntarily surrenders any prohibited [snake, other prohibited animal,] plant, animal, or microorganism or any restricted plant, animal, or microorganism 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 6. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 7. This Act shall take effect upon its approval.

(Approved June 17, 1992.)

Note

1. Edited pursuant to HRS §23G-16.5.