

A Bill for an Act Relating to Poultry Inspection.

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

SECTION 1. Section 161-2, Hawaii Revised Statutes, is amended to read as follows:

“~~[(§)161-2]~~ **Findings and declaration of necessity.** It is hereby declared that the poultry industry is a paramount agricultural industry of this State and the production and marketing of poultry is an enterprise that is of significant importance to the economy of the State and to the health of the consuming public. It is essential to the public health and welfare of consumers that they be protected by assuring that poultry or poultry products distributed to them are wholesome, not adulterated, and properly marked, labeled, and packaged. Unwholesome, adulterated, or misbranded poultry or poultry products are injurious to the public health and welfare, destroy markets for wholesome, not adulterated, and properly labeled and packaged poultry or poultry products, and result in sundry losses to poultry producers and processors of poultry as well as injury to consumers. The unwholesome, adulterated, mislabeled, or deceptively packaged articles can be sold at lower prices and compete unfairly with the wholesome, not adulterated, and properly labeled and packaged articles, to the detriment of consumers and the public generally. It is hereby found that regulation by the department of agriculture and cooperation by this State with the United States Department of Agriculture as contemplated by this chapter is appropriate to protect the health and welfare of consumers and otherwise to effectuate the purposes of this chapter.

The 90th Congress enacted Public Law 90-492, entitled “The Wholesome Poultry Products Act”~~“[.]~~, which is now redesignated as the “Poultry Products Inspection Act”. The Poultry Products Inspection Act is intended to protect the consuming public from adulterated or misbranded poultry or poultry products and to assist the states in their efforts to accomplish this objective. The Poultry Products Inspection Act authorizes the United States Secretary of Agriculture to furnish financial and related assistance to states for the administration of poultry inspection programs which conform to established federal standards up to fifty per cent of the estimated total cost of the cooperative program. Hawaii’s poultry industry is not subject to poultry inspection law or rules and regulations that meet the minimum federal requirement in this area. [The State in] In order to qualify for the cooperative program, the State must demonstrate “progressive action” by July 18, 1970; and, further, all physical facilities must be upgraded in accordance with the established federal standards by July 18, 1971. Failure to comply with the standards prescribed by the Poultry Products Inspection Act will result in [Federal] federal control of the poultry or poultry processing industries of the State. Accordingly, the State of Hawaii deems it to be in the interest of the State’s public health and

welfare to take such steps as are necessary to qualify for federal financial and related assistance for the administration of a poultry inspection program which conforms to federal standards prescribed in the [Federal] Poultry Products Inspection Act."

SECTION 2. Section 161-3, Hawaii Revised Statutes, is amended to read as follows:

"[§161-3] Definitions.

["Animal food manufacturer" means any person engaged in the business of manufacturing or processing animal food derived wholly or in part from carcasses, or parts or products of the carcasses, of poultry.

"Board" means the board of agriculture or its designated representative.

"Department" means the department of agriculture.

"Person" means any individual, firm, corporation, association, or partnership, or any organized group of persons whether incorporated or not.

"Wholesaler" means any person who buys or sells poultry or poultry products in trade channels other than retail. For the purpose of this chapter a wholesaler who also has retail operations will be deemed to be a wholesaler.

"Intrastate commerce" means commerce within this State.

"Licensee" means a person issued a license under part III of this chapter.

"Poultry" means any domesticated bird, whether live or dead.

"Poultry product" means any poultry carcass or part thereof, or any food product which is made wholly or in part from any poultry carcass or part thereof, excepting products which contain poultry ingredients only in a relatively small proportion or historically have not be considered by consumers as products of the poultry food industry, and which are exempted by the board from definition as poultry food product under such conditions as the board may prescribe to assure that the poultry ingredients in the products are not adulterated and that the products are not represented as poultry products.

"Poultry broker" means any person engaged in the business of buying or selling poultry or poultry products on commission, or who otherwise negotiates the purchase or sale or exchange of such poultry or poultry product other than for the person's own account or as an employee of another person, firm or corporation.

"Renderer" means any person engaged in the business of rendering carcasses or parts or products of the carcasses of poultry, except rendering conducted under inspection or exemption under this chapter.

"Capable of use as human food" shall apply to any carcass, or part or product of a carcass, of any poultry, unless it is denatured or otherwise identified as required by regulations prescribed by the board to deter its use as human food, or it is naturally inedible by humans.

"Processed" means slaughtered, canned, boned, salted, stuffed, rendered, cut up, or otherwise manufactured or prepared.

"Adulterated" shall apply to any poultry or poultry product under one or more of the following circumstances:

- (1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, the poultry or poultry product shall not be considered adulterated under this clause if the quantity of substance in or on such poultry or poultry product does¹ not ordinarily render it injurious to health.
- (2) (A) If it bears or contains by reason of administration of any substance to the live poultry or otherwise any added poisonous or added deleterious substance other than one which is:

- (i) a pesticide chemical in or on a raw agricultural commodity; or¹
 - (ii) a food additive; or
 - (iii) a color additive which may, in the judgment of the board make the poultry or poultry product unfit for human consumption.¹
- (B) If it is, in whole or in part, a raw agricultural commodity and the commodity bears or contains a pesticide chemical which is unsafe under the Federal Food, Drug, and Cosmetic Act or the Hawaii Food, Drug and Cosmetic Act.
 - (C) If it bears or contains any food additive which is unsafe under the Federal Food, Drug, and Cosmetic Act or the Hawaii Food, Drug and Cosmetic Act.
 - (D) If it bears or contains any color additive which is unsafe under the Federal Food, Drug, and Cosmetic Act or the Hawaii Food, Drug, and Cosmetic Act; provided that poultry or poultry products which are not adulterated under clauses (B), (C), or (D) shall nevertheless be deemed adulterated if use of the pesticide chemical, food additive, or color additive in or on such poultry or poultry products are prohibited by regulations of the board in establishments at which official inspection is maintained under part IV of this chapter.
- (3) If it consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food.
 - (4) If it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health.
 - (5) If it is, in whole or in part, a product of poultry which has died otherwise than by slaughter.
 - (6) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.
 - (7) If it has been intentionally or unintentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect under the Federal Food, Drug, and Cosmetic Act or the Hawaii Food, Drug, and Cosmetic Act.
 - (8) If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if any substance has been substituted, wholly or in part thereof; or if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is.

“Misbranded” shall apply to any poultry or poultry product under one or more of the following circumstances:

- (1) If its labeling is false or misleading in any particular;
- (2) If it is offered for sale under the name of another food;
- (3) If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word “imitation” and immediately thereafter, the name of the food imitated;
- (4) If its container is so made, formed, or filled as to be misleading;
- (5) If in a package or other container unless it bears a label showing (A) the name and place of business of the manufacturer, packer, or distrib-

- utor; and (B) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided that under clause (B) of this subparagraph (5), reasonable variations may be permitted, and exemptions as to small packages may be established, by regulations prescribed by the board;
- (6) If any word, statement, or other information required by or under authority of this chapter to appear on the label or other labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or devices, in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
 - (7) If it purports to be or is represented as a food for which a definition and standard of identity or composition has been prescribed by regulations of the board under this chapter unless (A) it conforms to such definition and standard, and (B) its label bears the name of the food specified in the definition and standard and, insofar as may be required by such regulations, the common names of optional ingredients, other than spices, flavoring, and coloring, present in such food;
 - (8) If it purports to be or is represented as a food for which a standard or standards of fill of container have been prescribed by regulations of the board under this chapter, and it falls below the applicable standard of fill of container, unless its label bears, in such manner and form that the regulations specify, a statement that it falls below such standard;
 - (9) If it is not subject to the provisions of subparagraph (7), unless its label bears (A) the common or usual name of the food, if any, and (B) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient, except that spices, flavorings, and colorings may when authorized by the board be designated as spices, flavoring, and colorings without naming each; provided that to the extent that compliance with the requirements of clause (B) of this subparagraph (9) is impracticable, or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the board;
 - (10) If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the board, after consultation with the United States Secretary of Agriculture, determines to be, and by regulations prescribes as, necessary in order fully to inform purchasers as to its value for such uses;
 - (11) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact; provided that to the extent that compliance with the requirements of this subparagraph (11) is impracticable, exemptions shall be established by regulations promulgated by the board; or
 - (12) If it fails to bear, directly thereon or on its container, as the board may by regulations prescribe, the inspection legend and, unrestricted by any of the foregoing, such other information as the board may require in regulations to assure that it will not have false or misleading labeling and that the public will be informed of the manner of handling required to maintain the poultry or poultry products in a wholesome condition.

“State” means State of Hawaii.

“Container” or “package” includes any box, can, tin, cloth, plastic, or other receptacle, wrapper, or cover.

ACT 92

“Label” means a display of written, printed, or graphic matter upon the immediate container, not including package liners, of any poultry or poultry product.

“Labeling” means all labels and other written, printed, or graphic matter (1) upon any poultry or poultry product or any of its containers or wrappers, or (2) accompanying such poultry or poultry product.

“Federal Poultry Products Inspection Act” means the Act so entitled approved August 28, 1957, (Public Law 85-172; 71 Stat. 441, USC 451 et seq.), as amended by the Wholesome Poultry Products Act (Public Law 90-492; 82 Stat. 791), and Acts amendatory thereof or supplementary thereto.

“Federal Food, Drug, and Cosmetic Act” means the Act so entitled, approved June 25, 1938 (Public Law 75-765; 52 Stat. 1040), and Acts amendatory thereof or supplementary thereto.

“Pesticide chemical”, “food additive”, “color additive”, and “raw agricultural commodity” shall have the same meanings for purposes of this chapter as under the Federal Food, Drug and Cosmetic Act.

“Official mark” means the official inspection legend or any other symbol prescribed by regulations of the board to identify the status of any poultry or poultry product under this chapter.

“Official inspection legend” means any symbol prescribed by regulations of the board showing that poultry or poultry products were inspected and passed in accordance with this chapter.

“Official certificate” means any certificate prescribed by regulations of the board for issuance by veterinarians, meat inspectors, or other persons performing official functions under this chapter.

“Official device” means any device described or authorized by the board for use in applying any official mark.

“Official establishment” means any establishment as determined by the board at which inspection of the slaughter of poultry, or the processing of poultry products, is maintained under this chapter.

“Reinspection” means the re-examination of poultry and poultry products previously inspected and the inspection of poultry and poultry products during processing.]

“Adulterated” includes any poultry or poultry product in one or more of the following circumstances:

- (1) It bears or contains any poisonous or deleterious substance which may render it injurious to health; provided that if the substance is not an added substance, the poultry or poultry product shall not be considered adulterated if the quantity of the substance in or on the poultry or poultry product does not ordinarily render it injurious to health.
- (2) (A) It bears or contains by reason of administering any substance to the live poultry, including any added poisonous or added deleterious substance other than one which is (i) a pesticide chemical in or on a raw agricultural commodity; (ii) a food additive; or (iii) a color additive, which may make the poultry or poultry product unfit for human consumption in the judgment of the board.
 - (B) It is, in whole or in part, a raw agricultural commodity and the commodity bears or contains a pesticide chemical which is unsafe under the Federal Food, Drug, and Cosmetic Act or chapter 328.
 - (C) It bears or contains any food additive which is unsafe under the Federal Food, Drug, and Cosmetic Act or chapter 328.

- (D) It bears or contains any color additive which is unsafe under the Federal Food, Drug, and Cosmetic Act or chapter 328.
- (E) Poultry or poultry products which are not adulterated under (B), (C) or (D) shall nevertheless be deemed adulterated if use of the pesticide chemical, food additive, or color additive in or on the poultry or poultry products is prohibited by the board in establishments subject to inspection under part IV.
- (3) It consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or unfit for human consumption.
- (4) It has been prepared, packed, or held under unsanitary conditions, whereby it may be contaminated with filth or whereby it may be injurious to health.
- (5) It is, in whole or in part, a product of poultry that has died other than by slaughter.
- (6) Its container is composed, in whole or in part, of any poisonous or deleterious substance that may render the contents injurious to health.
- (7) It has been intentionally or unintentionally subjected to radiation unless the use of the radiation was in conformity with both the Federal Food, Drug, and Cosmetic Act and chapter 328.
- (8) Any valuable constituent has been in whole or in part omitted or abstracted from it; or any substance has been substituted wholly or in part for it; or damage or inferiority has been concealed in any manner; or any substance has been added or mixed into it or packed with it so as to increase its bulk or weight, or to reduce its quality or strength, or to make it appear better or of greater value than it is.

“Board” means the board of agriculture or its designated representative.

“Capable of use as human food” refers to any poultry carcass, poultry part, or poultry product unless it is denatured or identified by rule to deter its use as human food, or unless it is naturally inedible by humans.

“Commercial carrier” means any person owning, controlling, operating, or managing any vehicle, directly or indirectly, for public use in the transportation by land, water, or air of goods or passengers for compensation.

“Department” means the department of agriculture.

“Federal Food, Drug, and Cosmetic Act” means the federal Act so entitled, approved June 25, 1938 (Pub. L. 75-675; 52 Stat. 1040; 21 U.S.C.A. Section 301 et seq.), and all amendments to that Act.

“Intrastate commerce” means commerce within this State.

“Label” means a display of written, printed, or graphic matter upon the immediate container, not including package liners, of any poultry or poultry product.

“Labeling” means all labels and other written, printed, or graphic matter (1) upon any poultry or poultry product or any of its containers or wrappers, or (2) accompanying any poultry or poultry product.

“Licensee” means a person issued a license under part III of this chapter.

“Misbranded” includes any poultry or poultry product in one or more of the following circumstances:

- (1) Its labeling is false or misleading in any particular.
- (2) It is offered for sale under the name of another food.
- (3) It is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word “imitation” and immediately thereafter the name of the food imitated.
- (4) Its container is made, formed, or filled as to be misleading.
- (5) It is in a package or other container unless it bears a label showing:

- (A) The name and place of business of the manufacturer, packer, or distributor; and
 - (B) An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided that the board may permit reasonable variations, and may prescribe exemptions for small packages.
- (6) Any word, statement, or other information required by this chapter to appear on the label or other labeling is not prominently placed with adequate conspicuousness, as compared with other words, statements, designs, or devices, on the labeling, and in adequate terms to be likely to be read and understood by the ordinary individual under customary conditions of purchase and use.
 - (7) It purports to be or is represented as a food for which a definition and standard of identity or composition has been prescribed by the board under this chapter, unless (A) it conforms to that definition and standard, and (B) its label bears the name of the food specified in the definition and standard, and bears the common names of optional ingredients, as may be required, other than spices, flavoring, and coloring, present in the food.
 - (8) It purports to be or is represented as a food for which a standard or standards of fill of container have been prescribed by the board under this chapter, and it falls below the applicable standard of fill of container, unless its label bears, in the manner and form that the board prescribes, a statement that it falls below that standard.
 - (9) It is not subject to item (7), unless its label bears, (A) the common or usual name of the food, if any, and, (B) in case it is fabricated from two or more ingredients, the common or usual name of each ingredient, except that spices, flavorings, and colorings may, when authorized by the board, be designated as spices, flavorings, and colorings without naming each; provided that to the extent that compliance with this requirement is impracticable, or results in deception or unfair competition, exemptions shall be established by the board.
 - (10) It purports to be or is represented for special dietary uses, unless its label bears information concerning its vitamin, mineral, and other dietary properties that the board, after consultation with the United States Secretary of Agriculture, determines to be and prescribes as necessary, in order to fully inform purchasers as to its value for such uses.
 - (11) It bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact; provided that to the extent that compliance with this requirement is impracticable, exemptions shall be established by the board.
 - (12) It fails to bear, directly on it or on its container, as the board may prescribe, the inspection legend and, unrestricted by any of the foregoing, other information as the board may require, to assure that the labeling will not be false or misleading and that the public will be informed of the manner of handling required to maintain the poultry or poultry products in a wholesome condition.

“Official certificate” means any certificate prescribed by the board for issuance by veterinarians, inspectors, or other persons performing official functions under this chapter.

“Official device” means any device prescribed or authorized by the board for use in applying any official mark.

“Official inspection legend” means any symbol prescribed by the board showing that poultry or poultry products were inspected and passed in accordance with this chapter.

“Official mark” means the official inspection legend or any other symbol prescribed by the board to identify the status of any poultry or poultry product under this chapter.

“Person” means any individual, firm, corporation, association, partnership, or any organized group of persons whether incorporated or not.

“Pesticide chemical,” “food additive,” “color additive,” and “raw agricultural commodity” shall have the same meanings for purposes of this chapter as under the Federal Food, Drug, and Cosmetic Act.

“Poultry” means any domesticated bird, whether live or dead.

“Poultry broker” means any person engaged in the business of buying or selling poultry or poultry products on commission, or who otherwise negotiates the purchase, sale, or exchange of poultry or poultry products other than for the person’s own account or as an employee of another person, firm, or corporation.

“Poultry product” means any poultry carcass or part thereof, or any food product which is made wholly or in part from any poultry carcass or part thereof, excepting products which contain poultry ingredients only in a relatively small proportion or historically have not been considered by consumers as products of the poultry food industry, and which are exempted by the board from definition as poultry food product under conditions as the board may prescribe to assure that the poultry ingredients in the products are not adulterated and that the products are not represented as poultry products.

“Poultry Products Inspection Act” means the federal Act so entitled, approved August 28, 1957 (Pub. L. 85-172; 71 Stat. 441; 21 U.S.C.A. Section 451 et seq.), as amended by the Wholesome Poultry Products Act (Pub. L. 90-492; 82 Stat. 791; 21 U.S.C.A. Section 451 et seq.), and all amendments to those Acts.

“Processed” means slaughtered, canned, boned, salted, stuffed, rendered, cut up, or manufactured or prepared.

“Reinspection” means the re-examination of poultry and poultry products previously inspected and the inspection of poultry and poultry products during processing.

“Renderer” means any person engaged in the business of rendering carcasses, parts, or products of the carcasses of poultry, except rendering conducted under inspection or exemption under this chapter.

“State” means the State of Hawaii.

“Veterinarian” means the state veterinarian or any of the veterinarian’s duly authorized representatives.

“Wholesaler” means any person who buys or sells poultry or poultry products in trade channels other than retail. For the purpose of this chapter, a wholesaler who also has retail operations will be deemed to be a wholesaler.”

SECTION 3. Section 161-11, Hawaii Revised Statutes, is amended to read as follows:

“[§161-11] Certificate of sanitation. The board may issue certificates of sanitation to poultry slaughterhouses[,] and poultry processors[,] which are subject to [the provisions of] this chapter and which meet minimum sanitary specifications required for (1) the slaughtering of poultry for use of the poultry or poultry products in intrastate commerce, and (2) for the processing, transporting, storing, and handling of [such] poultry or poultry products in intrastate commerce. The board may [promulgate and] adopt rules [and regulations,] subject to chapter 91[,] governing the minimum sanitary specifications [required to be met in connection

therewith] and prescribing forms, requiring reports, and providing for periodic renewals of [such certificates.] certificates of sanitation.

Notwithstanding any requirement under this chapter or the rules [and regulations promulgated hereunder] adopted under this chapter which require the renovation or upgrading of the physical facilities of poultry slaughterhouses or poultry processors in order to obtain a certificate of sanitation, the board [shall], as of July 1, 1970, shall continue to issue certificates of sanitation to poultry slaughterhouses and poultry processors [who are now in business.] now licensed by the State, and shall [otherwise call on] allow them to continue their operations; provided that the facilities of [said] the poultry slaughterhouses and poultry processors shall be sanitary and that the products which emerge from their respective operations are wholesome, not adulterated, and fit for human [and other] consumption; and provided further that upon the sale or transfer of any of the foregoing businesses, the [purchasers] person to whom the business is transferred shall be required to meet all of the requirements [provided herein] of this chapter and the rules [and regulations promulgated hereunder.] adopted under this chapter.”

SECTION 4. Section 161-23, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The board, whenever it determines such action is necessary for the protection of the public, may prescribe by rules [and regulations]: (1) the styles and sizes of type to be used with respect to material required to be incorporated in labeling to avoid false or misleading labeling of any poultry or poultry products subject to this chapter; (2) definitions and standards of identity or composition for poultry or poultry products subject to this chapter and standards of fill of container for such poultry or poultry products not inconsistent with any standards established under the Federal Food, Drug, and Cosmetic Act, or under the [Federal] Poultry Products Inspection Act, and there shall be consultation between the board and the United States Secretary of Agriculture prior to the issuance of [such] the standards to avoid inconsistency between [such] those standards and the federal standards.”

SECTION 5. Section 161-28, Hawaii Revised Statutes, is amended to read as follows:

“[§161-28] Bribery. [Any person or any agent or employee of any person who gives, pays, or offers, directly or indirectly, to any inspector, or any other officer or employee of this State authorized to perform any of the duties prescribed by this chapter or by the rules and regulations of the board, any money or other thing of value, with intent to influence the inspector, or other officer or employee of this State in the discharge of any duty herein provided for in this chapter shall be deemed guilty of a felony, and shall upon conviction thereof, be punished by a fine not more than \$5,000 or imprisoned not more than three years, or both fine and imprisonment; and any inspector, or other officer or employee of this State authorized to perform any of the duties prescribed by this chapter who shall accept any money, gift, or other thing of value from any person engaged in intrastate commerce subject to this chapter, given with or without intent to influence the inspector's, officer's or employee's official action shall be guilty of a felony and shall, upon conviction be summarily discharged from office and shall be fined not more than \$10,000 or imprisoned not more than three years, or both fine and imprisonment.] (a) Any person or employee of any person, who gives, pays, or offers, directly or indirectly, to any inspector, or to any other officer or employee of the State authorized to perform any of the duties prescribed by this chapter or by the rules adopted by the board, any money or other thing of value, with intent to

influence the inspector or other officer or employee of this State in the discharge of any duty shall be guilty of a class C felony. The minimum fine shall be \$5,000.

(b) Any inspector or other officer or employee of this State authorized to perform any of the duties prescribed by this chapter who accepts any money, gift, or other thing of value from any person, officer, agent, or employee of any person, given with intent to influence the state inspector's, officer's, or employee's official actions, shall be discharged from office and shall be guilty of a class C felony. The minimum fine shall be \$1,000.

(c) Notwithstanding subsection (a), any inspector or other officer or employee of this State authorized to perform any of the duties prescribed by this chapter who receives or accepts from any person who is engaged in intrastate commerce and is subject to this chapter any gift, money, or other thing of value given with or without intent to influence the inspector's, officer's, or employee's official actions, shall be discharged from office and shall be guilty of a class C felony. The minimum fine shall be \$1,000."

SECTION 6. Section 161-29, Hawaii Revised Statutes, is amended to read as follows:

"[§161-29] Exemptions. (a) The provisions of this chapter requiring inspection of the slaughtering of poultry and the processing of carcasses, parts thereof, and poultry products at establishments conducting [such] those operations shall not apply:

- (1) To the slaughtering by any person of poultry of the person's own raising, and the processing by the person of the carcasses, parts thereof, and poultry products of [such] the poultry exclusively for use by the person and members of the person's household and the person's nonpaying guests and employees; [nor]
- (2) To the slaughtering or processing of poultry or poultry products which are wholesome, unadulterated, and fit for human consumption by a producer on the producer's own premises and of the producer's own raising for sale to a consumer and received directly by the consumer on the producer's premises for exclusive use by [said] the consumer and members of the consumer's household, the consumer's nonpaying guests, and employees; [nor] or
- (3) To the custom slaughter by any person of poultry delivered by the owner thereof or the owner's agent for [such] slaughter, and the processing by [such] the slaughterer of the carcasses, parts thereof, and poultry product of [such] the poultry, exclusively for use in the household of [such] the owner, by the owner, and members of the owner's household and the owner's nonpaying guests and employees; provided that [such] the custom slaughterer does not engage in the business of buying or selling any carcasses, parts thereof, of poultry or poultry products, capable of use [in] as human [foods;] food; and provided further that [such] the slaughter of poultry and processing of poultry or poultry products shall be conducted in accordance with [such] the sanitary conditions, record keeping, registration, and disease control provisions [as the board may by regulation prescribe.] specified by rule.

(b) The transportation by commercial carrier of carcasses, parts thereof, poultry, or poultry products produced without inspection under [the provisions of paragraphs (a)(1), (a)(2), and (a)(3) of this section] subsection (a) is prohibited, except under permit issued by the board.

(c) The provisions of this chapter requiring inspection of poultry or poultry products shall not apply to operations of a type traditionally and usually conducted at retail stores or restaurants, when conducted at any retail store or restaurant [store or restaurant] or similar retail-type establishment for sale at [such] the establishments [and] in normal retail quantities or service of [such] poultry or poultry products to consumers; provided that:

- (1) The poultry or poultry products have been inspected and passed previously in compliance with this chapter; and [provided that the]
- (2) The processing, handling, and storage of poultry or poultry products shall be conducted in accordance with sanitary conditions [as] the board may [by regulation prescribe.] specify by rule.

(d) In order to accomplish the objectives of this chapter, the board may by [regulations] rule exempt [such other] operations which the board determines would best be exempted to further the purposes of this chapter, to the extent that [such] the exemptions conform to the [Federal] Poultry Products Inspection Act and the [federal] regulations thereunder.

(e) [The board may by order suspend or terminate any exemptions under this section with respect to any person whenever it finds that such action will aid in effectuating the purposes of this chapter.] A person conducting custom exempt operations shall register with the board as a custom exempt operator under this subsection and shall obtain a permit for exemption from the board to conduct those operations. In its discretion, the board may refuse, withdraw, or modify any permit for exemption under this subsection if it determines that the action is necessary to effectuate the purposes of this chapter.

(f) The adulteration and misbranding provisions of this chapter, other than the requirement of the inspection legend, shall apply to poultry or poultry products which are not required to be inspected under this section.”

SECTION 7. Section 161-36, Hawaii Revised Statutes, is amended to read as follows:

“**[§161-36] Records; subject to examination.** (a) For the enforcement of this chapter, the following classes of persons shall keep [such] records, as the board by [regulations] rule may [prescribe,] require, that will fully and correctly disclose all transactions; and all persons subject to [such] these requirements shall, at all reasonable times, upon notice by an authorized representative of the board, afford [such] that representative [and] or any authorized representative of the United States Secretary of Agriculture [accompanied by the representative of the board] access to their places of business and opportunity to examine the facilities, inventory, and records thereof, to copy all [such] those records, and to take reasonable samples of their inventory upon payment of the fair market value therefor:

- (1) Any person that is engaged, in or for intrastate commerce, in the business of slaughtering any poultry or processing, freezing, packaging, or labeling any carcasses, or parts or products of carcasses, of any [such] poultry[,] capable of use as human [food,] or animal [food;] food, including any person operating under the exemptions in section 161-29(a)(2) or (3);
- (2) Any person that is engaged in the business of buying or selling, as poultry brokers, wholesalers, or otherwise, or transporting in intrastate commerce, or storing in or for [such] intrastate commerce, any carcasses, or parts or products of carcasses, of any [such] poultry;
- (3) Any person that is engaged in business, in or for intrastate commerce, as renderers, or engaged in the business of buying, selling, or transporting, in [such] intrastate commerce, any dead, dying, disabled, or

diseased poultry, or parts of the carcasses of any such poultry that died otherwise than by slaughter.

(b) Any record required to be maintained by this section shall be maintained for [such] the period [of time as the board may by regulations prescribe.] specified by rule.”

SECTION 8. Section 161-37, Hawaii Revised Statutes, is amended to read as follows:

“**[§161-37] Inspection and sanitary requirements; sale; transportation. Articles not intended for human food.** [The board may provide by regulations for inspection and sanitary requirements under part IV of] Inspection shall not be made under this chapter at any establishment for the slaughter of poultry or the processing of any carcasses or parts or products of poultry, which are not intended for use as human food, [but such] provided that the poultry or poultry products shall, prior to their offer for sale or transportation in intrastate commerce, unless naturally inedible by humans, be denatured or otherwise identified as [prescribed] specified by [regulations of the board] rule to deter their use for human food. No person shall buy, sell, transport, or offer for sale or transportation, or receive for transportation, in intrastate commerce, any carcasses, parts thereof, poultry, or poultry products of any [such] poultry[,] which are not intended for use as human food unless they are denatured or otherwise identified as required by the [regulations of] rules adopted by the board or are naturally inedible by humans.”

SECTION 9. Section 161-38, Hawaii Revised Statutes, is amended to read as follows:

“**[§161-38] Dead, dying, disabled, or diseased poultry.** No person engaged in the business of buying, selling, or transporting in intrastate commerce[,] dead, dying, disabled, or diseased poultry, or any parts [of the] or carcasses of any poultry that died otherwise than by slaughter, shall buy, sell, transport, offer for sale or transportation, or receive for transportation[,] in [such] intrastate commerce[,] any dead, dying, disabled, or diseased poultry or parts [of the] or carcasses of any [such] poultry that died otherwise than by slaughter, unless [such] the transaction or transportation is made in accordance with [such regulations as] rules that the board may [prescribe] adopt to assure that [such] the poultry, or the unwholesome parts or products thereof, will be prevented from being used for human food purposes.”

SECTION 10. Section 161-41, Hawaii Revised Statutes, is amended to read as follows:

“**[§161-41] Inspection; compensation.** All poultry slaughtered by any slaughterhouse licensed under this part shall be inspected by [poultry] inspectors authorized by the department, both before and after slaughtering, and no [such] poultry shall be slaughtered, or after slaughter, be sold, transported, offered for sale or transportation, or received for transportation, in intrastate commerce unless the slaughtering or the use after slaughtering in intrastate commerce is approved by [poultry inspectors.] an inspector.

The management of any processing establishment[,] or slaughterhouse, or the owner of any poultry to be slaughtered requiring the services of [a poultry] an inspector in [any work day, or on Sundays,] excess of eight consecutive hours on any workday, or in excess of forty hours in any work week, or [other] on legal holidays, shall pay to the department [of agriculture] for any overtime inspection

ACT 92

services[,] the current state overtime rate for each [man-hour] hour of work performed by the inspector.

The department [of agriculture] shall pay the inspector, or inspectors, for all overtime inspection services performed, provided that the party requesting or requiring the overtime inspection services shall, sufficiently in advance of the overtime period, arrange with the department for the services.”

SECTION 11. Section 161-47, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Whenever any carcass, part of a carcass, poultry, or poultry product or any product exempted from the definition of a poultry product is found by any authorized representative of the board upon any premises where it is held for purposes of, or during or after distribution in, intrastate commerce and there is reason to believe that any poultry or poultry product is adulterated or misbranded and is capable of use as human food, or that it has not been inspected in violation of this chapter or of the [Federal Wholesome] Poultry Products Inspection Act or [the Hawaii or Federal Food, Drug, and Cosmetic Act,] chapter 328, or that the poultry or poultry product has been or is intended to be distributed in violation of any [such provisions,] of those laws, it may be detained by the representative for a period not to exceed twenty days, pending action or notification of any federal authorities having jurisdiction over the poultry or poultry product, and shall not be moved by any person from the place at which it is located when detained until released by the representative. All official marks may be required by the representative to be removed from the poultry or poultry product before it is released unless it appears to the satisfaction of the board that the poultry or poultry product is eligible to retain the marks.

(b) Any carcass, part of a carcass, poultry, or poultry product, or any dead, dying, disabled, or diseased poultry that is being transported in intrastate commerce or is held for sale in the State after being so transported and that (1) is or has been prepared, sold, transported, or otherwise distributed or offered or received for distribution in violation of this chapter, or (2) is capable of use as human food and is adulterated or misbranded, or (3) in any other way is in violation of this chapter, shall be liable to be proceeded against and seized and condemned, at any time, in any [circuit] court within the jurisdiction of which the poultry or poultry product is found. If the poultry or poultry product is condemned, it shall, after entry of the decree, be disposed of by destruction or sale as the court may direct and the proceeds, if sold, less the court costs and fees and storage and other proper expenses, shall be paid into the general fund of the State, but the poultry or poultry product shall not be sold contrary to this chapter or the [Federal Wholesome] Poultry Products Inspection Act or the Hawaii or Federal Food, Drug, and Cosmetic Act; provided that upon the execution and delivery of a good and sufficient bond issued on the condition that the poultry or poultry product shall not be sold or otherwise disposed of contrary to this chapter or the laws of the United States, the court may direct that the poultry or poultry product be delivered to the owner thereof subject to supervision by authorized representatives of the board as is necessary to insure compliance with the applicable laws. When a decree of condemnation is entered against the poultry or poultry product and it is released under bond, or destroyed, court costs and fees and storage and other proper expenses shall be awarded against the person, if any, intervening as claimant of the poultry or poultry product.”

SECTION 12. Section 161-47, Hawaii Revised Statutes, is amended by amending subsections (d), (e), and (f) to read as follows:

“(d) Any person who forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person engaged in the performance of official duties under this chapter shall be [fined not more than \$5,000 or imprisoned not more than three years, or both.] guilty of a class C felony.

(e) Any person who violates any provision of this chapter for which no other criminal penalty is provided by this chapter shall be [fined not more than \$1,000 or imprisoned not more than one year, or both,] guilty of a misdemeanor; but if the violation involves intent to defraud or any distribution or attempted distribution of poultry or poultry product that is adulterated, the person shall be [fined not more than \$10,000 or imprisoned not more than three years, or both,] guilty of a class C felony; provided that no person shall be subject to penalties under this section for receiving for transportation any poultry or poultry product in violation of this chapter if the receipt was made in good faith, unless the person refuses to furnish on request of a representative of the board the name and address of the person from whom the poultry or poultry product was received and copies of all documents, if [any there be,] there are any, pertaining to the delivery of the poultry or poultry product.

(f) Nothing in this chapter shall be construed as requiring the board to issue citations and summons or to report for prosecution or injunction proceedings for minor violations of this chapter whenever it believes that the public interest will be adequately served by a suitable written notice of warning. In determining whether the public interest will be adequately served by a written notice of warning, the board shall take into account, among other factors:

- (1) The compliance history of the persons responsible;
- (2) The magnitude of the violation;
- (3) Whether compliance with this chapter would likely result from that notice; and
- (4) Whether the violation is of a minor or technical nature.”

SECTION 13. Section 161-48, Hawaii Revised Statutes, is amended to read as follows:

“**§161-48 Construction.** The licenses required by this chapter shall be in addition to any other licenses required by law.

The requirements of this chapter shall apply to persons, establishments, poultry, and poultry products regulated under the [Federal] Poultry Products Inspection Act only to the extent provided for in section 23 of the [Federal] Act.

The operation and effect of and provision of this chapter conferring a general power shall not be impaired or qualified by the granting of a specific power or powers. Each provision of this chapter is intended to be construed liberally in light of the declaration stated in section 161-2.

If any of the [foregoing] provisions of this chapter are in conflict with any statute, [regulation] rule, or ordinance, [the provisions of] this chapter shall take precedence.”

SECTION 14. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 15. This Act shall take effect upon its approval.

(Approved May 7, 1993.)

Note

1. So in original.