

ACT 64

S.B. NO. 956

A Bill for an Act Relating to Agricultural Inspections.

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

SECTION 1. In 2003, the legislature passed Act 85, Regular Session of 2003 (Act 85), establishing the Hawaii Invasive Species Council (HISC). Act 85 declared that “the silent invasion of Hawaii by alien invasive species is the single greatest

threat to Hawaii's economy, natural environment, and the health and lifestyle of Hawaii's people and visitors." In its 2004 report, HISC identified tasks to be undertaken to address the problem of invasive species. One of the recommendations involved a reprioritization of inspection and quarantine services for goods imported into the state based on data provided by the Kahului Airport Risk Assessment. Imported commodities that are considered high risk for pests should receive the level of attention necessary to protect Hawaii from pests, regardless of their point of origin or means of transportation.

The purpose of this Act is to allow the department of agriculture to adopt rules that require identification of specific articles on negotiable and non-negotiable warehouse receipts, bills of lading, or other documents of title for inspection of pests.

SECTION 2. 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; microorganisms; 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. The department may adopt rules to require identification of specific articles on negotiable and non-negotiable warehouse receipts, bills of lading, or other documents of title for inspection of pests. In addition, the department [by] shall adopt rules [shall] to designate restricted articles that shall require [a]:
 - (A) A permit from the department in advance of importation [and shall designate other articles that shall require a]; or
 - (B) A department letter of authorization or registration in advance of importation.

The restricted articles shall include but not be limited to certain microorganisms or living insects. Failure to obtain the permit, letter of authorization, or registration 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. All passengers, officers, and crew 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; and
 - (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; and

- (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:

(A) Giving the following additional information:

- (i) The kind (scientific name), quantity, and description;
- (ii) The locality where same were grown or produced;
- (iii) 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;
- (iv) The port from which the same were last shipped;
- (v) The name of the shipper; and
- (vi) The name of the consignee; and

(B) Containing:

- (i) A request that the department, by its duly authorized agent, examine the articles described;
- (ii) An agreement by the importer to be responsible for all costs, charges, or expenses; and
- (iii) 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. If the

importer, importer's agent, or transportation company []requests[] inspection of sealed containers of the above-mentioned articles at locations other than where the articles are first received or discharged and the department determines that inspection at such place is appropriate, the department may require payment of costs necessitated by these inspections, including overtime costs;

- (8) Disinfection or quarantine. If, upon inspection, any article 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; and
- (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. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 19, 2005.)