
A BILL FOR AN ACT

RELATING TO CIVIL LIABILITY FOR THE INTRASTATE TRANSPORT OF
INVASIVE SPECIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

PART I

1
2 SECTION 1. The legislature finds that immediate action is
3 needed to further protect Hawaii from the movement of invasive
4 species between islands.

5 Through Act 85, Session Laws of Hawaii 2003, the
6 legislature recognized the silent invasion of Hawaii by alien
7 invasive species as the single greatest threat to Hawaii's
8 economy, natural environment, and the health and lifestyle of
9 Hawaii's people and visitors.

10 The legislature further finds that the State has spent
11 millions of dollars to control the invasive coqui frog, but
12 control efforts were too late to stop its spread across the
13 island of Hawaii, where it now infests hundreds of thousands of
14 acres, affecting tourism revenues, property values, residents'
15 quality of life, and the environment. The coqui frog has been
16 eradicated from Kauai and eradicated from most of the infested
17 sites on Maui; however, the frog continues to be transported to



1 islands via shipments of landscape materials from infested
2 nurseries and plant providers on the island of Hawaii. Some
3 businesses on the other islands have become "revolving doors"
4 for the reintroduction of coqui frogs, requiring constant
5 expenditure of human and financial resources to detect and
6 control new introductions. Each year, the department of
7 agriculture and local invasive species committees respond to
8 hundreds of new reports of coqui frogs. Coqui frogs have been
9 detected in shipments of plant materials to Molokai on at least
10 four different occasions. Equipment and vehicles may also
11 vector coqui frogs to new locations.

12 The non-native little fire ant is widespread in the Hilo
13 area and has now been detected in Waipio valley and Kona coffee
14 farms. This little fire ant causes blindness in pets and
15 livestock and threatens ground-nesting wildlife, agricultural
16 production, and human health. The little fire ant has been
17 successfully contained to one location on Kauai and almost
18 eradicated from Maui, but it is known to be moving in inter-
19 island commerce. In December 2013, the little fire ant was
20 detected at several nurseries on Oahu and Maui on hapu'u tree
21 ferns, and as a result, now appears to be established at several



1 locations on Oahu. The little fire ant can be moved via plants,
2 cut flowers, fruit, soil, sand, equipment, and vehicles.

3 The legislature further finds that the constant
4 reintroduction of these and other harmful and highly invasive
5 species creates an unfair financial burden on islands where such
6 pests are not known to occur or where active detection and
7 control operations exist. The continued reintroduction of
8 invasive species threatens to undermine or destroy ongoing
9 efforts to keep such pests from becoming established. Existing
10 law prohibits the movement of pest species inter-island and
11 authorizes the department of agriculture to inspect and
12 quarantine any infested materials. However, the department
13 lacks adequate inspection capability, and some pests, such as
14 the little fire ant and coqui frog, are exceptionally difficult
15 to detect. Public reports are the best method to detect new
16 populations of little fire ants and coqui frogs that have
17 breached the State's quarantine system.

18 The legislature further finds that those residents and
19 businesses on islands where these pests have become widespread
20 are suffering enormous financial losses and decreases to their
21 overall quality of life and that additional support is needed to
22 develop effective control methods.



1 The purpose of this Act is to:

- 2 (1) Establish an affirmative responsibility on the
3 consignor of any landscape material or products,
4 agricultural goods, construction materials, equipment,
5 vehicles, soil, or sand to prevent the movement of
6 coqui frogs, little fire ants, and other species
7 designated by the department of agriculture;
- 8 (2) Support development of additional tools to stop the
9 movement of invasive species between islands; and
- 10 (3) Provide necessary funds to achieve the objectives of
11 this Act.

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

15 **"PART . RESTRICTIONS ON INTRASTATE MOVEMENT OF REGULATED**
16 **ARTICLES**

17 **§150A- Restrictions on intrastate movement of regulated**
18 **articles.** No person shall move any regulated article intrastate
19 from any quarantined area except in accordance with this part.

20 **§150A- Definitions.**



1 "Certificate" means a document in which an inspector
2 affirms that a specified regulated article meets the
3 requirements of this part and may be moved intrastate.

4 "Compliance agreement" means a written agreement between
5 the department and a person engaged in growing, handling, or
6 moving regulated articles that are moved intrastate, in which
7 the person agrees to comply with this part and any conditions
8 imposed under this part.

9 "Coqui frog" means living frogs of the species
10 *Eleutherodactylus coqui*.

11 "Limited permit" means a document in which an inspector
12 affirms that a specified regulated article not eligible for a
13 certificate is eligible for intrastate movement only to a
14 specified destination and in accordance with conditions
15 specified on the permit.

16 "Little fire ant" means living ants of the species
17 *Wasmannia auropunctata*.

18 "Management plan" means a plan prepared by the department
19 of agriculture that includes acceptable treatment options for
20 infestations of the little fire ant, coqui frog, or any other
21 species designated by the department.



1 "Movement" or "moved" means the act of shipping,
2 transporting, delivering, or receiving for movement, or
3 otherwise aiding, abetting, inducing, or causing to be moved.

4 "Non-compacted soil" means soil that can be removed from an
5 article by brisk brushing or washing with water under normal
6 water pressure.

7 "Reproducing colony" means:

8 (1) A combination of one or more little fire ant workers
9 and one or more of the following immature little fire
10 ant forms:

11 (A) Eggs;

12 (B) Larvae; or

13 (C) Pupae;

14 (2) A male and female coqui frog or a male coqui frog and
15 coqui frog eggs; or

16 (3) Other forms or species designated by the department.

17 "Soil-moving equipment" means equipment used for moving or
18 transporting soil, including but not limited to bulldozers, dump
19 trucks, or road scrapers.

20 "Widespread infestation" means any island where little fire
21 ant colonies, coqui frog colonies, or any other species as
22 designated by the department, are present on more than twenty-



1 five acres and no active control or containment efforts are
2 underway.

3 **§150A- Regulated articles.** The following are regulated
4 articles:

- 5 (1) Little fire ant queens and reproducing colonies of
6 little fire ants;
- 7 (2) Coqui frogs and reproducing colonies of coqui frogs;
- 8 (3) Baled hay and baled straw stored in direct contact
9 with the ground;
- 10 (4) Non-propagated material related to agriculture,
11 including but not limited to:
 - 12 (A) Compost;
 - 13 (B) Mulch; or
 - 14 (C) Fertilizer;
- 15 (5) Used soil-moving equipment, unless removed of all non-
16 compacted soil; and
- 17 (6) Any other article or means of conveyance that an
18 inspector determines presents a risk of spreading the
19 little fire ant, coqui frog, or any other species
20 designated by the department due to its proximity to
21 an infestation of the little fire ant, coqui frog, or
22 the designated species.



1 **§150A- Quarantined areas.** (a) The department shall
2 quarantine each portion of the State that is infested.

3 (b) Less than an entire island may be listed as a
4 quarantined area only if the department determines that:

5 (1) The county of which the island is a part has adopted
6 and is enforcing restrictions on the intrastate
7 movement of the regulated articles listed in this part
8 that are equivalent to the restrictions on intrastate
9 movement imposed by this part; and

10 (2) Designating less than the entire island as a
11 quarantined area will prevent the spread of the little
12 fire ant, coqui frog, or any other species designated
13 by the department.

14 (c) The department may include uninfested acreage within a
15 quarantined area due to its proximity to an infestation or
16 inseparability from the infested locality for quarantine
17 purposes, as determined by:

18 (1) Projections of the spread of little fire ants, coqui
19 frogs, or any other species designated by the
20 department around the periphery of the infestation, as
21 determined by previous years' surveys;



1 (2) Availability of natural habitats and host materials,
2 within the uninfested acreage, suitable for
3 establishment and survival of populations of the
4 little fire ant, coqui frog, or any other species
5 designated by the department; and

6 (3) Necessity of including uninfested acreage within the
7 quarantined area in order to establish readily
8 identifiable boundaries.

9 (d) The department or an inspector may temporarily
10 designate any non-quarantined area as a quarantined area in
11 accordance with the criteria specified in subsections (a), (b),
12 and (c). The department shall give written notice of this
13 designation to the owner or person in possession of the non-
14 quarantined area, or, in the case of publicly owned land, to the
15 person responsible for the management of the non-quarantined
16 area; thereafter, the intrastate movement of any regulated
17 article from an area temporarily designated as a quarantined
18 area is subject to this section. As soon as practicable, either
19 this area shall be added to the list of designated quarantined
20 areas in subsection (e), or the department shall terminate the
21 designation. The department shall give written notice of the
22 termination as soon as practicable to the owner or person in



1 possession of, or, in the case of publicly owned land, the
2 person responsible for the management of, an area for which the
3 designation is terminated.

4 (e) The designated quarantined areas include the county of
5 Hawaii.

6 **§150A- Intrastate movement of regulated articles from**

7 **quarantined areas.** (a) Any regulated article may be moved
8 intrastate from a quarantined area into or through a non-
9 quarantined area only if moved under the following conditions:

- 10 (1) With a certificate or limited permit issued and
11 attached in accordance with this part;
- 12 (2) Without a certificate or limited permit; provided that
13 each of the following conditions is met:
 - 14 (A) The regulated article was moved into the
15 quarantined area from an area that was non-
16 quarantined at the time the regulated article was
17 taken;
 - 18 (B) The point of origin is indicated on a waybill
19 accompanying the regulated article;
 - 20 (C) The regulated article is moved through the
21 quarantined area without stopping except for
22 refueling, or for traffic conditions, such as



1 traffic lights or stop signs, or has been stored,
2 packed, or parked in locations inaccessible to
3 the little fire ant, coqui frog, or any other
4 species designated by the department, or in
5 locations that have been treated in accordance
6 with management plans under this part prepared by
7 the department, while in or moving through any
8 quarantined area; and

9 (D) The article has not been combined or commingled
10 with other articles so as to lose its individual
11 identity; or

12 (3) Without a certificate or limited permit; provided that
13 the regulated article is a soil sample being moved to
14 a laboratory approved by the department to process,
15 test, or analyze soil samples.

16 (b) Any treatments shall be in accordance with management
17 plans developed by the department.

18 **§150A- Issuance of a certificate or limited permit. (a)**

19 An inspector may issue a certificate for the intrastate movement
20 of a regulated article approved under a compliance agreement if
21 it determines that the regulated article:



- 1 (1) Is eligible for unrestricted movement under all other
2 applicable domestic plant quarantine regulations;
- 3 (2) Is to be moved intrastate in compliance with any
4 additional conditions deemed necessary under state law
5 to prevent the spread of the little fire ant, coqui
6 frog, or any other species designated by the
7 department; and
- 8 (3) Meets at least one of the following criteria:
- 9 (A) Is free of infestations of the little fire ant,
10 coqui frog, or any other species designated by
11 the department, based on the individual's visual
12 examination of the article;
- 13 (B) Is grown, produced, manufactured, stored, or
14 handled in a manner that would prevent
15 infestation or would destroy all life stages of
16 the little fire ant or coqui frog;
- 17 (C) Is treated in accordance with department
18 management plans developed under this part; or
- 19 (D) If the article is containerized nursery stock,
20 has been produced in accordance with requirements
21 established under management plans developed
22 under this part.



1 (b) An inspector shall issue blank certificates to a
2 person operating under a compliance agreement in accordance with
3 this part or authorize reproduction of the certificates on
4 shipping containers, or both, as requested by the person
5 operating under the compliance agreement. These certificates
6 may then be completed and used, as needed, for the intrastate
7 movement of regulated articles that have met all of the
8 requirements of subsection (a).

9 (c) An inspector may issue a limited permit for the
10 intrastate movement of a regulated article not eligible for a
11 certificate if the inspector determines that the regulated
12 article:

13 (1) Is to be moved intrastate to a specified destination
14 for specified handling, utilization, or processing,
15 where the destination and other conditions are listed
16 in the limited permit, and this intrastate movement
17 will not result in the spread of the little fire ant
18 or coqui frog because the little fire ant or coqui
19 frog will be destroyed by the specified handling,
20 utilization, or processing; and

21 (2) Is to be moved intrastate in compliance with any
22 conditions that the department may impose under this



1 part to prevent the spread of the little fire ant,
2 coqui frog, or other species designated by the
3 department.

4 **§150A- Compliance agreements.** (a) The department shall
5 develop and implement a comprehensive and effective inter-island
6 quarantine program, including the use of compliance agreements
7 patterned after the United States Department of Agriculture's
8 animal plant health inspection service as set forth in title 7
9 Code of Federal Regulations section 301.81.

10 (b) Any person who grows, handles, or moves regulated
11 articles intrastate may enter into a compliance agreement if the
12 person reviews each stipulation of the compliance agreement with
13 an inspector, has facilities and equipment to carry out
14 disinfestation procedures or application of chemical materials
15 in accordance with management plans developed under this part,
16 and meets applicable state training and certification standards.
17 Any person who enters into a compliance agreement with the
18 department shall agree to comply with this part and any
19 conditions imposed under this part.

20 **§150A- Cancellation of a certificate, limited permit, or**
21 **compliance agreement.** An inspector may cancel, orally or in
22 writing, any certificate, limited permit, or compliance



1 agreement whenever the inspector determines that the holder of
2 the certificate or limited permit, or the person who has entered
3 into the compliance agreement, has not complied with this part
4 or any conditions imposed under this part. If the cancellation
5 is oral, the cancellation shall become effective immediately and
6 the cancellation and reasons for the cancellation shall be
7 confirmed in writing as soon as circumstances allow but within
8 twenty days after oral notification of the cancellation. Any
9 person whose certificate, limited permit, or compliance
10 agreement has been canceled may appeal the decision, in writing,
11 within ten days after receipt of the written cancellation
12 notice. The appeal shall state all of the facts and reasons the
13 department should consider in deciding the appeal. A hearing
14 may be held to resolve any conflict as to any material fact.
15 The department shall adopt rules for the hearing in accordance
16 with chapter 91. As soon as practicable, the department shall
17 grant or deny the appeal, in writing, stating the reasons for
18 the decision.

19 **§150A- Assembly and inspection of regulated articles.**

20 (a) Persons requiring certification or other services shall
21 coordinate the services with an inspector at least forty-eight
22 hours before the services are needed.



1 (b) The regulated articles shall be assembled at the place
2 and in the manner the inspector determines is necessary to
3 comply with this part.

4 **§150A- Attachment and disposition of certificates and**
5 **limited permits.** (a) Any person transporting a regulated
6 article intrastate shall ensure that the certificate or limited
7 permit authorizing intrastate movement of the regulated article
8 is, at all times during intrastate movement, attached to:

- 9 (1) The outside of the container encasing the regulated
10 article;
- 11 (2) The article itself, if it is not in a container; or
- 12 (3) The consignee's copy of the accompanying waybill;
13 provided that any description of the regulated article
14 on the certificate or limited permit, and on the
15 waybill, are sufficient to identify the regulated
16 article.

17 (b) The consignor shall furnish the certificate or limited
18 permit authorizing intrastate movement of a regulated article or
19 cause the certificate or limited permit to be furnished to the
20 consignee at the shipment's destination.

21 **§150A- Little fire ant and coqui frog detection,**
22 **control, exclusion, and enforcement program for nurseries**



1 **producing containerized plants.** (a) There is established in
2 the department a little fire ant and coqui frog detection,
3 control, exclusion, and enforcement program for nurseries
4 producing containerized plants. The program is designed to keep
5 nurseries free of the little fire ant and coqui frog, and
6 provide a basis to certify containerized nursery stock for
7 intrastate movement. Participating nurseries shall operate
8 under a compliance agreement in accordance with this part. Such
9 compliance agreements shall state the specific requirements that
10 a nursery agrees to follow to move plants in accordance with the
11 requirements of the program. Certificates and a nursery
12 identification number may be issued to the nursery for use on
13 shipments of regulated articles.

14 (b) Participating nurseries shall survey their entire
15 premises twice a month for the presence of little fire ants and
16 coqui frogs using protocols established by the department.

17 (c) Participating nurseries shall be inspected by an
18 inspector at least twice per year. More frequent inspections
19 may be necessary depending upon little fire ant or coqui frog
20 infestation levels immediately surrounding the nursery, the
21 thoroughness of nursery management in maintaining a little-fire-
22 ant-free or coqui-free premises, and the number of previous



1 detections of little fire ants or coqui frogs in or near
2 containerized plants. Any nurseries determined during nursery
3 inspections to have little fire ant or coqui frog colonies shall
4 be immediately treated to the extent necessary to eliminate the
5 colonies.

6 (d) Under this program, nursery plants that are
7 transported shall originate in a nursery that meets the
8 requirements of this part. Nurseries shall implement a
9 treatment program with registered bait and contact insecticides
10 for the little fire ant and hot water treatment or other
11 department-approved treatments for coqui frogs. The premises,
12 including growing and holding areas, shall be maintained free of
13 the little fire ant and coqui frog. As part of this treatment
14 program, all exposed soil surfaces, including sod and mulched
15 areas, on property where plants are grown, potted, stored,
16 handled, loaded, unloaded, or sold shall be treated with
17 approved insecticide or pesticide consistent with departmental
18 standards. Follow-up treatments with a contact insecticide in
19 accordance with management plans under this part shall be
20 applied to eliminate all remaining colonies.

21 (e) For plants grown on the premises of participating
22 nurseries, treatment of soil and potting media in accordance



1 with standards established by management plans developed by the
2 department prior to planting is required.

3 (f) For plants received by participating nurseries from
4 outside sources, to prevent the spread into a nursery free of
5 the imported fire ant by newly introduced, infested nursery
6 plants, all plants shall be:

7 (1) Obtained from nurseries in compliance with the
8 requirements of this section and that operate under a
9 compliance agreement in accordance with this part; or

10 (2) Treated upon delivery in accordance with management
11 plans under this part, and within the specified number
12 of days be either:

13 (A) Repotted in treated potting soil media;

14 (B) Retreated in accordance with management plans
15 under this part at the specified interval; or

16 (C) Transported.

17 (g) Participating nurseries shall maintain records of the
18 nursery's surveys and treatments for the little fire ant or
19 coqui frog. These records shall be made available to the
20 department upon request.

21 (h) If an inspector detects little fire ants or coqui
22 frogs in nursery stock of a participating nursery, issuance of



1 certificates for movement shall be suspended until necessary
2 treatments are applied and the plants and nursery premises are
3 determined to be free of the little fire ant and coqui frog.
4 The department may declare a nursery to be free of the little
5 fire ant and coqui frog upon reinspection of the premises. This
6 inspection shall be conducted no sooner than thirty days after
7 treatment. During this period, certification may be based upon
8 treatments for plants in accordance with management plans
9 developed by the department under this part.

10 (i) Upon notification by the county that a confirmed
11 little fire ant infestation was found on a shipment from a
12 nursery that had until then been considered free of the little
13 fire ant, the department shall cease its certification of
14 shipments from that nursery. An investigation shall commence
15 immediately to determine the probable source of the problem and
16 to ensure that the problem is resolved. If the problem is an
17 infestation, issuance of certification for movement on the basis
18 of little-fire-ant-free or coqui-free premises shall be
19 suspended until treatment and elimination of the infestation is
20 completed. Reinstatement into the program may be granted upon
21 determination that the nursery premises are free of the little



1 fire ant or coqui frog, and that all other provisions of this
2 part are being followed.

3 (j) In cases where the issuance of certificates is
4 suspended through oral notification, the suspension and the
5 reasons for the suspension shall be confirmed in writing within
6 twenty days of the oral notification of the suspension. Any
7 nursery whose issuance of certificates has been suspended may
8 appeal the decision, in writing, within ten days after receipt
9 of a written suspension notice. The appeal shall state all of
10 the facts and reasons that the department should consider in
11 deciding the appeal. A hearing may be held to resolve any
12 conflict as to any material fact. The department shall adopt
13 rules for the hearing in accordance with chapter 91. As soon as
14 practicable, the department shall grant or deny the appeal, in
15 writing, stating the reasons for the decision.

16 **§150A- County authority.** Unless and until the
17 department implements these provisions, including the adoption
18 of any necessary rules, any county may establish its own
19 requirements by ordinance to prevent the introduction of
20 infested, regulated articles, consistent with the intent of this
21 law and not in conflict with any departmental rules, including
22 but not limited to:



- 1 (1) Development of a little-fire-ant free certification
- 2 program;
- 3 (2) Development of a coqui-frog-free certification
- 4 program; and
- 5 (3) Treatment requirements for regulated articles being
- 6 moved to any island of the county.

7 **§150A- Information sharing.** The department shall make
8 available online on a monthly basis the numbers and locations by
9 island of all interceptions of little fire ants and coqui frogs
10 detected by department inspectors.

11 **§150A- Penalties.** Any person who moves infested
12 regulated articles intrastate shall be subject to a fine equal
13 to the value of the shipment or \$10,000, whichever is greater."

14 SECTION 3. There is appropriated out of the general
15 revenues of the State of Hawaii the sum of \$2,000,000 or so much
16 thereof as may be necessary for fiscal year 2014-2015 to the
17 department of agriculture for enforcing restrictions on
18 intrastate movement of regulated articles and the establishment
19 of an inter-island quarantine program to control intrastate
20 movement of invasive species.

21 The sum appropriated shall be expended by the department of
22 agriculture for the purposes of this part.



PART II

SECTION 4. (a) There is established within the Hawaii
invasive species council an invasive species task force to
address the continued movement of invasive plants, plant pests,
and vertebrate pests between islands.

(b) The invasive species task force shall:

(1) Consider and propose recommendations to address the
continued movement of invasive plants, plant pests,
and vertebrate pests between islands;

(2) Gather relevant background data on invasive species
that pose a threat to Hawaii;

(3) Assess the current and future impact of invasive
species to Hawaii;

(4) Examine and assess existing methods for addressing
invasive species in Hawaii;

(5) Examine needed state policies or responses to address
the continued movement of invasive species between
islands; and

(6) Examine other concerns of the task force regarding
invasive species movement in Hawaii.



1 (c) The invasive species task force shall consist of
2 representatives from the following departments, sectors, and
3 organizations:

- 4 (1) Department of land and natural resources;
- 5 (2) Department of agriculture;
- 6 (3) Department of health;
- 7 (4) Department of business, economic development, and
8 tourism;
- 9 (5) Department of transportation;
- 10 (6) University of Hawaii;
- 11 (7) Agriculture;
- 12 (8) Horticulture;
- 13 (9) Shipping;
- 14 (10) Tourism; and
- 15 (11) Others as determined by the Hawaii invasive species
16 council.

17 (d) Members of the task force shall designate a chair from
18 among themselves and serve without compensation for their
19 service on the task force, but may be reimbursed for reasonable
20 expenses, including travel expenses, incurred for serving on the
21 task force.



1 (e) The invasive species task force shall meet at least
 2 four times to develop a comprehensive set of recommendations and
 3 shall submit a report of its findings and recommendations to the
 4 legislature no later than twenty days prior to the convening of
 5 the regular session of 2015.

6 (f) The invasive species task force shall be dissolved on
 7 July 1, 2015.

8 SECTION 5. There is appropriated out of the general
 9 revenues of the State of Hawaii the sum of \$50,000 or so much
 10 thereof as may be necessary for fiscal year 2014-2015 to
 11 establish the invasive species task force to address the
 12 continued movement of invasive plants, plant pests, and
 13 vertebrate pests between islands, including the use for
 14 facilitation or consultant services necessary to gather relevant
 15 background data and travel to ensure adequate statewide
 16 representation.

17 The sum appropriated shall be expended by the Hawaii
 18 invasive species council for the purposes of this part.

PART III

19 SECTION 6. This Act shall take effect on July 1, 2014.
 20

INTRODUCED BY:

Jessica Woods
 JAN 17 2014



H.B. NO. 1994

Report Title:

Invasive Species; Civil Liability; Intrastate Transport; Task Force; Appropriation

Description:

Establishes an affirmative responsibility on the consignor of any landscape material or products, agricultural goods, construction materials, equipment, vehicles, soil, or sand to prevent the movement of invasive species in Hawaii. Appropriates funds to the department of agriculture to enforce restrictions on intrastate movement of invasive species. Establishes and appropriates funds for an invasive species task force to address the continued movement of invasive plants, plant pests, and vertebrate pests between islands.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

