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# A BILL FOR AN ACT

RELATING TO INVASIVE SPECIES.

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

1           SECTION 1. The legislature finds that immediate action is  
2 needed to further protect Hawaii from the importation of  
3 invasive species. The biodiversity of the Hawaiian islands is a  
4 strength to be celebrated and protected. However, through Act  
5 85, Session Laws of Hawaii 2003, the legislature recognized the  
6 silent invasion of Hawaii by alien invasive species as the  
7 single greatest threat to Hawaii's economy, natural environment,  
8 and the health and lifestyle of Hawaii's residents and visitors.

9           The legislature finds that the continued importation of  
10 pest species threatens to undermine or destroy ongoing efforts  
11 to eradicate and control invasive species. In addition, the  
12 continued importation of invasive species to the islands is  
13 evidence that Hawaii's biosecurity system is inadequate to meet  
14 today's challenges. The unchecked movement of invasive species  
15 threatens our agricultural and economic security as well as our  
16 quality of life. Existing law prohibits the importation of pest  
17 species and authorizes the Hawaii department of agriculture to  
18 inspect and quarantine any infested materials. However, the



1 department lacks adequate staffing, facilities, and enforcement  
2 capacity to address the current biological crisis. Building the  
3 necessary capacity will take time. Failure to act now will  
4 foreclose the opportunity to prevent the eventual establishment  
5 of the harmful invasive species in the islands.

6 The purpose of this Act is to:

- 7 (1) Establish an affirmative responsibility on the  
8 consignor of any landscape material or products,  
9 agricultural goods, construction materials, equipment,  
10 vehicles, soil, or sand to prevent the importation of  
11 invasive species;
- 12 (2) Support development of additional tools to stop the  
13 importation of invasive species; and
- 14 (3) Provide necessary funds to achieve the objectives of  
15 this Act.

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

19 "PART . RESTRICTIONS ON IMPORTATION OF REGULATED ARTICLES

20 §150A- Restrictions on importation of regulated

21 articles. No person shall import any regulated article from any  
22 quarantined area except in accordance with this part.



1           **§150A- Definitions.** As used in this part, unless the  
2 context otherwise requires:

3           "Certificate" means a document in which an inspector  
4 affirms that a specified regulated article meets the  
5 requirements of this part and may be imported into the State.

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

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

15           "Management plan" means a plan prepared by the department  
16 of agriculture that includes acceptable treatment options for  
17 infestations of any species designated by the department.

18           "Movement" or "moved" means the act of shipping,  
19 transporting, delivering, or receiving for movement, or  
20 otherwise aiding, abetting, inducing, or causing to be moved.



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

4 "Soil-moving equipment" means equipment used for moving or  
5 transporting soil, including but not limited to bulldozers, dump  
6 trucks, or road scrapers.

7 **§150A- Regulated articles.** The following are regulated  
8 articles:

- 9 (1) Plants or propagative plant material, including cut  
10 flowers and foliage;
- 11 (2) Soil;
- 12 (3) Baled hay and baled straw stored in direct contact  
13 with the ground;
- 14 (4) Non-propagated material related to agriculture,  
15 including but not limited to:
- 16 (A) Compost;
- 17 (B) Mulch; or
- 18 (C) Fertilizer;
- 19 (5) Used soil-moving equipment, unless removed of all non-  
20 compacted soil; and



1 (6) Any other article or means of conveyance that an  
2 inspector determines presents a risk of spreading any  
3 invasive species designated by the department.

4 **§150A- Quarantined areas.** (a) The department shall  
5 determine whether to quarantine any counties within the  
6 continental United States based on the likelihood of importation  
7 of harmful invasive species.

8 (b) Less than an entire county may be listed as a  
9 quarantined area only if the department determines that:

10 (1) The county has adopted and is enforcing restrictions  
11 on the movement of the regulated articles listed in  
12 this part that are equivalent to the restrictions  
13 imposed by this part; and

14 (2) Designating less than the entire county as a  
15 quarantined area will prevent the spread of any  
16 invasive species designated by the department.

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

21 (1) Projections of the spread of invasive species  
22 designated by the department around the periphery of



1 the infestation, as determined by previous years'  
2 surveys;

3 (2) Availability of natural habitats and host materials,  
4 within the uninfested acreage, suitable for  
5 establishment and survival of specific invasive  
6 species populations designated by the department; and

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

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



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

4 **§150A- Importation of regulated articles from**  
5 **quarantined areas.** (a) Any regulated article may be imported  
6 from a quarantined area into or through a non-quarantined area  
7 only if moved under the following conditions:

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



1 any invasive species designated by the  
2 department, or in locations that have been  
3 treated in accordance with management plans under  
4 this part prepared by the department, while in or  
5 moving through any quarantined area; and

6 (D) The article has not been combined or commingled  
7 with other articles so as to lose its individual  
8 identity; or.

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

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

15 **§150A- Issuance of a certificate or limited permit. (a)**

16 An inspector may issue a certificate for the movement of a  
17 regulated article approved under a compliance agreement if it  
18 determines that the regulated article:

19 (1) Is eligible for unrestricted movement under all other  
20 applicable domestic plant quarantine regulations;

21 (2) Is to be moved in compliance with any additional  
22 conditions deemed necessary under state law to prevent





1 the spread of any invasive species designated by the  
2 department; and

3 (3) Meets at least one of the following criteria:

4 (A) Is free of infestations of any invasive species  
5 designated by the department, based on the  
6 individual's visual examination of the article;

7 (B) Is grown, produced, manufactured, stored, or  
8 handled in a manner that would prevent  
9 infestation or would destroy all life stages of  
10 any invasive species designated by the  
11 department;

12 (C) Is treated in accordance with department  
13 management plans developed under this part; or

14 (D) If the article is containerized nursery stock,  
15 has been produced in accordance with requirements  
16 established under management plans developed  
17 under this part.

18 (b) An inspector shall issue blank certificates to a  
19 person operating under a compliance agreement in accordance with  
20 this part or authorize reproduction of the certificates on  
21 shipping containers, or both, as requested by the person  
22 operating under the compliance agreement. These certificates



1 may then be completed and used, as needed, for the movement of  
2 regulated articles that have met all of the requirements of  
3 subsection (a).

4 (c) An inspector may issue a limited permit for the  
5 movement of a regulated article not eligible for a certificate  
6 if the inspector determines that the regulated article:

7 (1) Is to be moved to a specified destination for  
8 specified handling, utilization, or processing, where  
9 the destination and other conditions are listed in the  
10 limited permit, and this movement will not result in  
11 the spread of invasive species because any invasive  
12 species will be destroyed by the specified handling,  
13 utilization, or processing; and

14 (2) Is to be moved in compliance with any conditions that  
15 the department may impose under this part to prevent  
16 the spread of any species designated by the  
17 department.

18 **§150A- Compliance agreements.** (a) The department shall  
19 develop and implement a comprehensive and effective quarantine  
20 program, including the use of compliance agreements patterned  
21 after the United States Department of Agriculture's animal plant



1 health inspection service as set forth in title 7 Code of  
2 Federal Regulations section 301.81.

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

13 **§150A- Cancellation of a certificate, limited permit, or**  
14 **compliance agreement.** An inspector may cancel, orally or in  
15 writing, any certificate, limited permit, or compliance  
16 agreement whenever the inspector determines that the holder of  
17 the certificate or limited permit, or the person who has entered  
18 into the compliance agreement, has not complied with this part  
19 or any conditions imposed under this part. If the cancellation  
20 is oral, the cancellation shall become effective immediately and  
21 the cancellation and reasons for the cancellation shall be  
22 confirmed in writing as soon as circumstances allow but within



1 twenty days after oral notification of the cancellation. Any  
2 person whose certificate, limited permit, or compliance  
3 agreement has been canceled may appeal the decision, in writing,  
4 within ten days after receipt of the written cancellation  
5 notice. The appeal shall state all of the facts and reasons the  
6 department should consider in deciding the appeal. A hearing  
7 may be held to resolve any conflict as to any material fact.  
8 The department shall adopt rules for the hearing in accordance  
9 with chapter 91. As soon as practicable, the department shall  
10 grant or deny the appeal, in writing, stating the reasons for  
11 the decision.

12 **§150A- Assembly and inspection of regulated articles.**

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

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

19 **§150A- Attachment and disposition of certificates and**

20 **limited permits.** (a) Any person transporting a regulated  
21 article shall ensure that the certificate or limited permit



1 authorizing movement of the regulated article is, at all times  
2 during movement, attached to:

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

11 (b) The consignor shall furnish the certificate or limited  
12 permit authorizing movement of a regulated article or cause the  
13 certificate or limited permit to be furnished to the consignee  
14 at the shipment's destination.

15 **§150A- Penalties.** Any person who imports into the State  
16 infested articles regulated under this chapter may be subject to  
17 a civil penalty not less than \$1,000 nor more than \$10,000 per  
18 incident."

19 SECTION 3. There is appropriated out of the general  
20 revenues of the State of Hawaii the sum of \$2,000,000 or so much  
21 thereof as may be necessary for fiscal year 2014-2015 for  
22 enforcing restrictions on the importation of regulated articles



1 and the establishment of a quarantine program to control the  
2 importation of invasive species.

3 The sum appropriated shall be expended by the department of  
4 agriculture for the purposes of this Act.

5 SECTION 4. This Act shall take effect on July 1, 2014.

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INTRODUCED BY:

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JAN 23 2014



# H.B. NO. 2628

**Report Title:**

Invasive Species; Imported Goods; Civil Liability; 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 importation of invasive species into Hawaii. Appropriates funds to the department of agriculture to enforce restrictions on the importation of invasive species.

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