

**"CHAPTER 150A  
PLANT AND NON-DOMESTIC ANIMAL QUARANTINE  
AND MICROORGANISM IMPORT**

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## Note

L 2010, c 173, §13 provides:

L 2010, c 173, §13 provides:

"SECTION 13. (a) Between July 1, 2010, and September 30, 2010, the department of agriculture shall adopt new or amend existing rules to impose or increase the fees authorized to be charged under chapter 150A, Hawaii Revised Statutes, without regard to the public notice and public hearing requirements of section 91-3, Hawaii Revised Statutes, the small business impact review requirements of chapter 201M, Hawaii Revised Statutes, or the limit on fee increases under section 92-28, Hawaii Revised Statutes. The department shall set the fees at amounts intended to generate, together with the inspection, quarantine, and eradication service fee, sufficient revenues to pay the operation and maintenance costs of implementing the agriculture inspection and biosecurity programs of chapter 150A, Hawaii Revised Statutes, and the central services and departmental administrative expense assessments of section 36-27 and section 36-30, Hawaii Revised Statutes.

(b) If, by September 30, 2010, the department of agriculture has not complied with subsection (a), then the fee charged for each inspection or certification conducted under authority of chapter 150A shall be as follows, effective October 1, 2010:

- (1) A fee for inspection, safeguarding, witnessing departure, witnessing treatment, or certification requiring the services of personnel beyond regular work hours, including pre-shift, post-shift, holidays, or days off shall be \$50 plus mileage reimbursement, and an additional fee shall be assessed, which shall include applicable charges for overtime wages, fixed charges for personnel services, and meals;
- (2) A fee for any inspection during regular work hours conducted away from the port or department office that is conducted pursuant to requirements for export, certification, inter-island or intra-island movement, or disposition other than release at a port of arrival, such as witnessing departure, destruction, or treatment, shall be \$50 per hour plus mileage reimbursement;
- (3) An annual fee for nursery certification shall be \$100;
- (4) A fee for follow-up inspections required to correct deficiencies found in a certification inspection or inspections to remedy out-of-state rejections shall be \$50 per hour plus mileage reimbursement;
- (5) A fee for treatment or destruction of infested commodities performed by the department's plant quarantine branch shall be \$50 per parcel;

- (6) A fee for the use of a quarantine house operated by the department's plant quarantine branch shall be \$50 per room per month; and
- (7) A storage fee of \$5 per day shall be charged for commodities stored at any department plant quarantine branch office, forty-eight hours after written notification.

The fee shall be deposited into the pest inspection, quarantine, and eradication fund.

(c) Any subsequent amendments to the rules adopted or amended pursuant to subsection (a) or the fees established under subsection (b) shall be subject to all applicable provisions of chapter 91, chapter 201M, and section 92-28, Hawaii Revised Statutes."

Invasive species management requirements, including interisland and export database for agricultural commodities. L 2016, c 243, §§3, 6.

Plant quarantine branch, financial and performance audit; report to 2017 legislature. L 2016, c 243, §7.

#### **Cross References**

Coqui frog; designation as pest, see §141-3.

Invasive species council, see chapter 194.

Landowners liability for access to control invasive species, see chapter 520A.

Quarantine of domestic animals, see chapter 142, part I.

#### **Attorney General Opinions**

Department of agriculture has responsibility to keep State free of imported agricultural pests, and may receive gifts to assist in preventing entry of brown tree snakes into State. Att. Gen. Op. 92-4.

#### **Case Notes**

While this chapter and the board's microorganism import rules may have vested the board with exclusive authority to approve marine biotechnology firm's proposal to import and grow genetically engineered algae at the State's research and technology park, as the demonstration project constituted an action that proposed the use of state land, §343-5 plainly and unambiguously required the preparation of an environmental assessment before the board could approve firm's application. 118 H. 247 (App.), 188 P.3d 761.

## "PART I. GENERAL PROVISIONS

[§150A-1] **Short title.** This chapter may be cited as the "Hawaii Plant Quarantine Law". [L 1973, c 69, pt of §1]

" **§150A-2 Definitions.** As used in this chapter the term:

"Aggregate bulk freight" means manmade, unpackaged, pre-processed, inspected and certified, homogenous particulate material, without mark or count, that is usually free-flowing and bought and sold by weight or volume, such as clean sand, gravel, crushed stone, slag, recycled concrete, and geosynthetic aggregates.

"Algae" means any plant containing chlorophyll, which lacks true roots, stems, and leaves, and typically inhabits moist habitats, except those algae on or in humans or animals in Hawaii and those in or on processed foods, beverages, or pharmaceuticals.

"Animal" means any invertebrate or vertebrate species of the animal kingdom including but not limited to mammal, bird, fish, reptile, mollusk, crustacean, insect, mite, and nematode, other than common domestic animal such as dog and cat.

"Bacteria" means any prokaryotic or archaeobacterial organism, except those bacteria on or in humans or animals in Hawaii, and those in or on processed foods, beverages, or pharmaceuticals.

"Board" means the board of agriculture.

"Cement bulk freight" means unpackaged, homogenous cement, without mark or count, that is usually free-flowing and bought and sold by weight or volume.

"Chairperson" means the chairperson of the board of agriculture, or the chairperson's duly authorized agents.

"Coal bulk freight" means unpackaged, homogenous coal, without mark or count, that is usually free-flowing, bought and sold by weight or volume, and used as a fuel.

"Department" means the department of agriculture.

"Freight" means nonpassenger goods, cargo, or lading, transported for pay.

"Fungus" means all nonchlorophyll-bearing thallophytes, except those fungi on or in humans or animals in Hawaii, and those on or in processed foods, beverages, or pharmaceuticals.

"Import" means shipment to the State from any point outside of the State.

"Insect" means an invertebrate animal belonging to the class Insecta, including beetle, bug, fly, and other arthropods, such as spider, mite, tick, centipede, and wood louse.

"Inspect" means to examine material to ascertain the presence or absence of quarantine pests and to otherwise determine compliance with the provisions of this chapter or any rule adopted under this chapter.

"Inspector" means any employee or official of the department authorized by the board to administer and enforce the provisions of this law.

"Label" means the written, printed, or graphic matter upon the container of any article as pertaining to plant quarantine laws and regulations.

"Liquid bulk freight" means unpackaged, homogenous liquid goods, without mark or count, that are usually free-flowing and bought and sold by weight or volume, such as oil, or other complex mixture of petroleum hydrocarbons, bituminous liquids such as asphalt, gasoline, and fuel oils.

"Microbial product" means any product manufactured with known cultures of microorganisms for the purpose of bioremediation or bioaugmentation, including products such as microbial pesticides.

"Microorganism" means any unicellular microscopic organism including but not limited to algae, bacteria, fungi, protozoa, and viruses.

"Net weight" means the gross weight of the freight minus the container weight, if any.

"Passed" means the clearance status for entry given an article for import after inspection or quarantine requirements have been met.

"Pest" means any animal, insect, disease agent or other organism in any stage of development that is detrimental or potentially harmful to agriculture, or horticulture, or animal or public health, or natural resources including native biota or has an adverse effect on the environment as determined by the board.

"Protozoa" means any nonphotosynthetic eukaryotic organisms, either unicellular or composed of a group of more or less identical cells, generally motile by means of appendages or movements of the cell itself at some or all stages of their life cycle, except those protozoa on or in humans or animals in Hawaii, and those in or on processed foods, beverages, or pharmaceuticals.

"Soil" means that part of the upper layer of earth in which plants can grow; this material may or may not contain organic matter and includes such planting media as deteriorated peat, except clean coral, sand, pottery and industrial clay, volcanic cinders and other similar soil-free material.

"Unlisted microorganism" means any microorganism not on the lists of nonrestricted or restricted microorganisms or on the list of select human pathogen microorganisms.

"Vehicle" means any automobile, truck, tractor and similar equipment.

"Virus" means any or a class of noncellular submicroscopic obligate parasite, chiefly nucleoprotein in composition but often reducible to crystalline form, except those viruses on or in humans, or animals in Hawaii, and those on or in processed foods, beverages, or pharmaceuticals. [L 1973, c 69, pt of §1; gen ch 1985; am L 1990, c 243, §1; am L 1991, c 104, §1; gen ch 1993; am L 1995, c 193, §1; am L 1996, c 153, §2; am L 1997, c 63, §1; am L 1999, c 177, §2; am L 2000, c 211, §2; am L Sp 2008, c 3, §2; am L 2010, c 173, §3]

" **[§150A-3] Delegation of duties.** All authority vested in the board or chairperson by virtue of this chapter may with like force and effect be exercised by such employees of the department as the board or chairperson may from time to time designate for the purpose. [L 1973, c 69, pt of §1; gen ch 1993]

" **§150A-4 Effect on department of land and natural resources and the department of health.** Nothing in this chapter shall be construed to amend or alter the functions, duties, and powers of the department of land and natural resources and the department of health relative to chapters 171, 183D, 187A, 197, 321, and 328. [L 1973, c 69, pt of §1; am L 1987, c 230, §4 and c 283, §16]

" **§150A-4.5 Pest inspection, quarantine, and eradication fund.** (a) There is established in the state treasury the pest inspection, quarantine, and eradication fund, into which shall be deposited:

- (1) Legislative appropriations for biosecurity and inspection, quarantine, and eradication services;
- (2) Service fees, charges, and penalties collected under section 150A-5.3;
- (3) Fees imposed for services pursuant to this chapter or rules adopted under this chapter;
- (4) Fines for violations of this chapter;
- (5) Federal funds received for biosecurity, pest inspection, control, management, quarantine, and eradication programs;
- (6) Grants and gifts;
- (7) All interest earned or accrued on moneys deposited in the fund; and
- (8) Any other moneys made available to the fund.

(b) The moneys in the pest inspection, quarantine, and eradication fund shall be expended by the department for the operation of biosecurity and pest inspection, quarantine, eradication, and monitoring programs; the electronic importer manifest program; related facilities; the execution of emergency remedial measures when pests are detected in the course of inspection and quarantine activities by the department; training of inspectors; education of the agricultural industry, permit and certificate holders, and the general public as to import requirements; and for any other purposes deemed necessary to carry out the purposes of this chapter. In addition, the moneys shall be expended to facilitate the processing and issuance of permits and microorganism import documents and for the operations, activities, and monitoring of permitted and certified plants, animals, and microorganisms. [L Sp 2007, c 9, pt of §1; am L 2008, c 236, §5; am L 2010, c 173, §4; am L 2012, c 127, §2]

## "PART II. REGULATION OF IMPORTATION

**§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 shall adopt rules to designate restricted articles that shall require:

- (A) A permit from the department in advance of importation; 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. [L 1973, c 69, pt of §1; am L 1974, c 232, §1; am L 1977, c 114, §2; am L 1980, c 265, §2; am L 1985, c 133, §1; gen ch 1985; am L 1990, c 243, §2; am L 1992, c 229, §3; am L 2000, c 211, §3; am L 2005, c 64, §2]

" **§150A-5.3 Inspection, quarantine, and eradication service fee and charge.** (a) There is imposed a fee for the inspection, quarantine, and eradication of invasive species contained in any freight, including marine commercial container shipment, air freight, or any other means of transporting freight, foreign or

domestic, but not including aggregate bulk freight, cement bulk freight, coal bulk freight, or liquid bulk freight, that is brought into the State. The transportation company shall bill the fee to the person responsible for paying the freight charges to the transportation company within fifteen days of the delivery of the freight. The fee shall be paid by the person responsible for paying the freight charges to the transportation company within forty-five days of receipt of the bill. The transportation company shall collect the fee from the person responsible and forward the payment to the department at the port of disembarkation within forty-five days of receipt of the fee; provided that the transportation company shall not be liable for any fee that is not paid by the person responsible for paying the freight charges to the transportation company.

The department shall deposit the fee into the pest inspection, quarantine, and eradication fund under section 150A-4.5.

(b) The fee shall be assessed and collected on the net weight of the imported freight computed on the basis of 75 cents for every one thousand pounds of freight, or part thereof, brought into the State. [L Sp 2007, c 9, pt of §1; am L 2008, c 16, §4; am L Sp 2008, c 3, §3; am L 2010, c 173, §5; am L 2011, c 36, §1]

" **[§150A-5.4] Failure to pay or remit the inspection, quarantine, and eradication service fee; fines.** (a) The following fines shall be imposed for failure to pay, bill, or remit the inspection, quarantine, and eradication service fee as provided for in section 150A-5.3:

- (1) A person responsible for paying the freight charges to the transportation company who fails to pay the fee; or
- (2) A transportation company that fails to:
  - (A) Bill the fee, within fifteen days of the delivery of the freight, to the person responsible for paying the freight charges to the transportation company; or
  - (B) Remit the fee to the department within forty-five days of collecting the fee from the person responsible for paying the freight charges to the transportation company,

shall pay a fine of two times the amount of the inspection, quarantine, and eradication service fee or \$50, whichever is higher.

(b) All fines shall be paid to the department and deposited into the pest inspection, quarantine, and eradication fund under section 150A-4.5. [L 2010, c 173, §2]

" **§150A-5.5 What constitutes importation.** (a) The landing of any article for the purpose of inspection or quarantine shall not be construed to give the article any status or the owner any right incident to articles which have actually been passed and allowed into the State.

(b) In legal effect, articles landed for the purpose of inspection or quarantine shall be construed to be still outside the State seeking entry, and shall not, in whole or in part, be considered suitable for entry into the State unless a tag, label, or stamp has been affixed to the article, its container, or its delivery order by the inspector as provided in section 150A-5(9), except that articles quarantined in the biocontrol containment facilities of the department or of other government agencies engaged in joint projects with the department may be released upon issuance of a permit approved by the board.

(c) Notwithstanding subsections (a) and (b), the import of articles in violation of this chapter or rules adopted under this chapter may subject the importer to penalty although the articles have not been passed for entry. [L 1985, c 133, §4; am L 1990, c 243, §3; am L 1996, c 153, §3]

" **[§150A-5.6] Exceptions to the right to import.** Nothing in this chapter shall permit the importation of any animal or article if the same, or any of them, has, by rule of the department been prohibited. [L 1985, c 133, §5]

" **§150A-6 Soil, plants, animals, etc., importation or possession prohibited.** No person shall transport, receive for transport, or cause to be transported to the State, for the purpose of debarkation or entry thereinto, any of the following:

- (1) Soil; provided that limited quantities of soil may be imported into the State for experimental or other scientific purposes under permit with conditions prescribed by the department;
- (2) Rocks, plants, plant products, or any article with soil adhering thereto;
- (3) Any live snake, flying fox, fruit bat, Gila monster, injurious insect, or eels of the order Anguilliformes, or any other animal, plant, or microorganism in any stage of development that is detrimental or potentially harmful to agriculture, horticulture, animal or public health, or natural resources, including native biota, or has an adverse effect on the environment as determined by the board, except, as provided in this chapter and provided that, notwithstanding the list of animals prohibited entry

into the State, the department may bring into and maintain in the State four live, sterile brown tree snakes of the male sex for the purpose of research or training of snake detector dogs, and, further, that a government agency may bring into and maintain in the State not more than two live, nonvenomous snakes of the male sex solely for the purpose of exhibition in a government zoo, but only after:

- (A) The board is presented with satisfactory evidence that the sex of the snakes was established to be male prior to the shipment; and
- (B) The board gives written approval conditioned upon such terms as the board may deem necessary, which terms shall include measures to assure the prevention of escape, continuing supervision and control by the board with respect to any department import under this paragraph, and the manner in which the snakes shall be disposed of or destroyed.

In case of the death of one or more snakes, the department or government agency may import and maintain replacements subject to the conditions described in this paragraph; and

- (4) Any live or dead honey bees, or used bee equipment that is not certified by the department to be free of pests; provided that nothing in this paragraph shall be construed to prohibit the importation of bee semen. [L 1973, c 69, pt of §1; am L 1974, c 232, §2; am L 1985, c 133, §2 and c 179, §2; am L 1990, c 243, §4; am L 1994, c 48, §1; am L 1996, c 153, §4; am L 1997, c 63, §2; am L 1998, c 10, §1, c 28, §1, and c 244, §1; am L 1999, c 21, §1 and c 177, §3; am L 2000, c 211, §4; am L 2003, c 10, §1]

#### **Cross References**

Home-based agriculturally produced honey, see §§328-79, 80.  
Honey bee exports, see §150A-31.

#### **Law Journals and Reviews**

Crying Over Spilt Milk: Recognizing Hawaii's Unique State Characteristics in the Context of the Dormant Commerce Clause. 32 UH L. Rev. 513.

" **§150A-6.1 Plant import.** (a) The board shall maintain a list of restricted plants that require a permit for entry into



the State. Restricted plants or any portion thereof shall not be imported into the State without a permit issued pursuant to rules.

(b) The department shall designate, by rule, as restricted plants, specific plants that may be detrimental or potentially harmful to agriculture, horticulture, the environment, or animal or public health, or that spread or may be likely to spread an infestation or infection of an insect, pest, or disease that is detrimental or potentially harmful to agriculture, horticulture, the environment, or animal or public health. In addition, plant species designated by rule as noxious weeds are designated as restricted plants.

(c) The department may regulate or prohibit the sale of specific plants on the list of restricted plants by rule.

(d) Noxious weeds may be imported only for research, by permit, and shall not be offered for sale or sold in the State.

(e) No person shall import, offer for sale, or sell within the State any plant or propagative portion of *Salvinia molesta* or *Salvinia minima* and *Pistia stratiotes*. [L 2000, c 211, pt of §1; am L 2003, c 85, §9; am L 2004, c 10, §16; am L 2008, c 40, §2]

" **§150A-6.2 Animal import.** (a) The board shall maintain:

- (1) A list of conditionally approved animals that require a permit for import into the State;
- (2) A list of restricted animals that require a permit for both import into the State and possession; and
- (3) A list of animals that are prohibited entry into the State.

(b) The board shall adopt rules, pursuant to chapter 91, to establish an advisory committee of no fewer than three members with applicable expertise in vertebrate biology to identify whether an animal is a prohibited hybrid animal when the department suspects that the lineage of the animal is not as stated by the owner or on other official documents.

(c) Animals on the lists of conditionally approved and restricted animals shall be imported only by permit. Any animal that is not on the lists of conditionally approved, restricted, or prohibited animals shall be prohibited until the board's review and determination for placement on one of these lists; provided that the department may issue a special permit on a case-by-case basis for the importation and possession of an animal that is not on the lists of prohibited, restricted, or conditionally approved animals, for the purpose of remediating medical emergencies or agricultural or ecological disasters, or conducting medical or scientific research in a manner that the animal will not be detrimental to agriculture, the environment,

or humans, if the importer of the animal can meet permit requirements as determined by the board; and provided further that the department may issue a short-term special permit on a case-by-case basis not to exceed ninety days for the importation and possession of an animal that is not on the lists of prohibited, restricted, or conditionally approved animals for the purpose of filming, performance, or exhibition, if the importer of the animal can meet permit and bonding requirements as determined by the board. [L 2000, c 211, pt of §1]

" **§150A-6.3 Microorganism import.** (a) The board shall maintain:

- (1) A list of nonrestricted microorganisms allowed entry into the State without a permit;
- (2) A list of restricted microorganisms that require a permit for import into the State and possession; and
- (3) A list of microorganisms that are select human pathogens allowed entry into the State without a permit but that require the department to notify the department of health of entry for the purpose of possible department of health inspection and monitoring.

Import of a microorganism on these lists, as well as import of any unlisted microorganism, shall be subject to the notification, labeling, and inspection requirements of section 150A-5, and is allowed only as provided herein.

(b) Import of a microorganism on the restricted list of microorganisms shall be by permit issued pursuant to rules and subject to conditions established by rules; provided that, if the department in its discretion determines that import of a microorganism on the restricted list or the microorganism's proposed use presents a high risk to agriculture, horticulture, the environment, or animal or public health, the import request shall be subject to advisory committee review and board approval, including a determination that the importer is able to comply with conditions established by the board, before a permit may be issued.

(c) Import and possession of an unlisted microorganism may be allowed based on the department's determination of the level of risk presented by the import, including its proposed use, to agriculture, horticulture, the environment, or animal or public health. Import shall be either by letter of authorization or special permit issued by the department, without advisory committee review or board approval, or, alternatively, by special permit issued by the department subsequent to advisory committee review and board approval, according to risk level as provided by rule; provided that in the latter instance the

importer is able to comply with conditions established by the board.

(d) The department may issue an emergency permit on a case-by-case basis to a state or federal agency or state university to allow import and possession of a microorganism on the list of restricted microorganisms or an unlisted microorganism for the purpose of remediating any emergency or disaster affecting agriculture, horticulture, the environment, animal or public health, or for emergency preparedness; provided that:

- (1) The board, without advisory committee review, first obtains advice from qualified persons with relevant expertise;
- (2) The board determines that import in less time than is required for issuance of a special permit under subsections (b) and (c) as applicable, is necessary to remediate the emergency or disaster; and
- (3) The importer is able to meet conditions established by the board.

(e) Microbial products may be imported as follows:

- (1) Microbial products containing certain strains of microorganisms on the nonrestricted list of microorganisms, as identified by rule, may enter the State without a permit but shall not be imported without a registration issued pursuant to rules. Import of an unregistered microbial product required to be registered with the department is a violation of this section; and
- (2) Import of microbial products other than those products required to be registered pursuant to paragraph (1) shall be by permit or letter of authorization, as provided in subsections (b) and (c) as applicable.

(f) The requirements of this section other than the notification, labeling, and inspection requirements of section 150A-5 shall not apply to import of microorganisms by the following:

- (1) The state department of health or Tripler Army Medical Center for their laboratories; provided that the department of health shall develop and implement within its laboratories a mechanism for coordinated oversight and inventory control of microorganisms imported for its laboratories and implement internal procedures to assure proper biosafety containment and laboratory practices commensurate with microorganism risk levels; and
- (2) A laboratory certified under the Clinical Laboratories Improvement Amendments of 1988 (42 U.S.C. 263 et

seq.); provided that the certified laboratory is registered with the department pursuant to rules and imports microorganisms that are applicable to the category of examinations or procedures for which the foregoing certification was approved.

The department of health and Tripler Army Medical Center may transfer any such imported microorganisms between their respective laboratories without approval from the department of agriculture, but with notification to the department of agriculture prior to the transfer; provided that transfer of such imported microorganisms from the department of health, Tripler Army Medical Center, or a laboratory certified and registered as described in paragraph (2) to other entities in the State shall require prior approval from the department of agriculture in the form of a letter of authorization or a permit for possession.

(g) The board may amend conditions in permits, letters of authorization, and registrations, or cancel permits, letters of authorization, and registrations, as necessary, if the board determines that the classification of the microorganism being imported or the conditions attendant to the microorganism's import and use must be changed due to newly discovered risks to agriculture, horticulture, the environment, or animal or public health. [L 2000, c 211, pt of §1; am L 2002, c 61, §2; am L 2003, c 12, §1]

" **§150A-6.4 Permit and other import document issuance; requirements.** Except as otherwise provided in this part, all permits, letters of authorization, or registrations referenced in sections 150A-6 through 150A-6.3 shall be issued pursuant to rules. Any violation of conditions listed on the permits, letters of authorization, or registrations shall be a violation of this chapter. [L 2000, c 211, pt of §1; am L 2002, c 61, §3]

" **§150A-6.5 Animals; prohibition against possession, etc.; exception.** No person shall possess, propagate, sell, transfer, or harbor any animal included on the list of prohibited animals maintained by the board, except upon a determination that the species:

- (1) Was initially permitted entry and later prohibited entry into the State; or
- (2) Was continually prohibited but unlawfully introduced and is currently established in the State; and
- (3) Is not significantly harmful to agriculture, horticulture, or animal or public health, and the environment.

Under the circumstances described in this [section], the board may permit possession of the individual animal through its registration with the department while still prohibiting the same species of animal from importation, propagation, transfer, and sale. [L 2000, c 211, pt of §1]

" **§150A-6.6 Import lists amendment.** Without regard to the notice and public hearing requirements of chapter 91, the board may adopt rules to make additions to or deletions from the lists required to be maintained in sections 150A-6.1 through 150A-6.3; provided that the board shall adopt rules pursuant to chapter 91 to establish methods to obtain public input and notify the public of additions to or deletions from the lists required under sections 150A-6.1 through 150A-6.3. [L 2000, c 211, pt of §1]

" **§150A-6.7 REPEALED.** L 2010, c 173, §10.

" **§150A-7 Disposition.** (a) It is a violation of sections 150A-5 and 150A-6 to bring into the State contrary to those sections any plant, plant product, animal, microorganism, or any article infested with pests or contaminated with soil and the same shall be refused admittance and may, in the discretion of the inspector, be seized and treated, destroyed, or excluded at the expense of the owner or the owner's agent.

(b) It is a violation of this part to bring to or possess in the State any living creature that is prohibited or restricted, without a permit issued by the department, except as expressly provided in this part. The creature shall constitute contraband and shall be seized immediately upon discovery, whenever found, and be destroyed, donated to a government zoo, or sent out of the State, at the discretion of the department. Any expense or loss in connection therewith shall be borne by the owner or the owner's agent.

(c) Whenever any living creature introduced or admitted under rules of the department escapes, or is found to be free from confinement, the department may confiscate or capture it and any progeny at the expense of the owner. The department may destroy the creature, donate it to a government zoo, or send it out of the State after five days at the discretion of the department. Any expense or loss in connection therewith shall be borne by the owner or the owner's agent. [L 1973, c 69, pt of §1; am L 1985, c 133, §3; am L 1990, c 243, §5; am L 1992, c 229, §4; am L 1998, c 10, §2; am L 1999, c 177, §4; am L 2000, c 211, §5]

" **§150A-7.5 User fees.** Fees may be assessed for the processing and issuance of permits issued by the department under this part, for inspections related to permit conditions, and for the registration of microbial products containing certain strains of microorganisms, as established by rule. [L 1996, c 153, §1; am L 1999, c 177, §5; am L 2000, c 211, §6]

" **[\$150A-7.6] Processing fees for importation and possession requests.** (a) There is imposed a fee for the processing of requests for the importation or possession of plants, animals, or soil that require a permit, or for the importation or possession of microorganisms that require a permit, letter of authorization, or registration under this chapter. The fee shall be paid in full at the time the request is submitted.

(b) The fees collected under this section shall be deposited into the pest inspection, quarantine, and eradication fund established under section 150A-4.5.

(c) The fees to process requests for importation and possession shall be as follows:

- (1) \$20 for a permit for a single shipment of restricted plants;
- (2) \$100 for a permit for unlimited number of shipments of restricted plants, as provided by permit, occurring within one year of the date of issuance;
- (3) \$20 for a permit for a single shipment of conditionally approved animals;
- (4) \$100 for a permit for up to an unlimited number of shipments of conditionally approved animals, as provided by permit, occurring within one year of the date of issuance;
- (5) \$50 for a permit for a single shipment of restricted animals that require permits for both importation and possession;
- (6) \$200 for a permit for up to an unlimited number of shipments of restricted animals that require permits for importation and possession, as provided by permit, occurring within one year of the date of issuance;
- (7) \$100 for a special permit for an unlisted animal in an emergency or disaster situation or for conducting medical or scientific research;
- (8) \$500 for a short-term special permit for an unlisted animal for a film production, performance, or exhibition;
- (9) \$2500 for a permit for plants, animals, or microorganisms that require a rule amendment to change a listing maintained by the board pursuant to section 150A-6.1, 150A-6.2, or 150A-6.3, to allow importation

- or possession of the organism or to otherwise accommodate the request for import or possession;
- (10) \$150 for a permit for a single shipment of listed or unlisted microorganisms that require permits for importation and possession;
  - (11) \$500 for a permit for up to an unlimited number of shipments of listed or unlisted microorganisms that require a permit for importation or possession, as provided by permit, occurring within one year of the date of issuance or within a specified calendar year;
  - (12) \$50 for a letter of authorization for import of unlisted microorganisms;
  - (13) \$100 for an emergency permit of an unlisted microorganism or a microorganism on the list of restricted microorganisms in an emergency or disaster situation;
  - (14) \$150 for registration to import a microbial product; and
  - (15) \$150 for registration of a laboratory described in section 150A-6.3(f)(2).

(d) In addition to any fee under subsection (c), a fee of \$250 shall be charged for the expedited processing of a permit, letter of authorization, or registration application. Expedited processing shall take no more than thirty days and shall not be available for a permit for importation or possession of plants, animals, or microorganisms that require:

- (1) An amendment to rules to change the listing of the organism;
- (2) Board approval; or
- (3) Review as to the requirements of chapter 343. [L 2010, c 172, §2]

" **§150A-8 Transporting in State.** Flora and fauna specified by rules and regulations of the department shall not be moved from one island to another island within the State or from one locality to another on the same island except by a permit issued by the department. [L 1973, c 69, pt of §1; am L 1974, c 232, §3; am L 1977, c 114, §3]

" **[§150A-9] Rules and regulations.** The department shall have the authority to carry out and effectuate the purposes of this chapter by rules and regulations. [L 1973, c 69, pt of §1]

" **§150A-9.5 Interim rules.** (a) The department shall have the power, subject to the provisions of this section, to establish, implement, and enforce interim rules governing the

transporting of flora and fauna into and within the State. Such rules shall not be subject to chapter 91.

(b) An interim rule may be adopted in the event that the importation or movement of any flora or fauna, in the absence of effective rules, creates a situation dangerous to the public health and safety or to the ecological health of flora or fauna present in the State which is so immediate in nature as to constitute an emergency. No interim rule shall be adopted without such a finding by the advisory committee on plants and animals created under section 150A-10.

(c) Interim rules adopted by the department pursuant to this section shall be effective as stated by such rules; provided that:

- (1) Any interim rule shall be published at least once statewide within twelve days of issuance; and
- (2) No interim rule shall be effective for more than one year.

(d) Any person may appeal the reasonableness of any interim rule or determination of the advisory committee to the circuit court. [L 1977, c 114, §1; am L 1999, c 177, §6; am L 2000, c 211, §7; am L 2003, c 85, §10; am L 2004, c 10, §16]

" **§150A-10 Advisory committee on plants and animals.** There shall be an advisory committee on plants and animals composed of the chairperson of the board or the chairperson's representative who shall be chairperson of the committee, the chairperson of the board of land and natural resources, the director of the office of environmental quality control, the director of department of health or their designees, and five other members, with expertise in plants, animals, or microorganisms, and who, by virtue of their vocation or avocation, also are thoroughly conversant with modern ecological principles and the variety of problems involved in the adequate protection of our natural resources. The latter five members shall be chosen by the chairperson. The committee shall advise and assist the department in developing or revising laws and regulations to carry out and effectuate the purposes of this chapter and in advising the department in problems relating to the introduction, confinement, or release of plants, animals, and microorganisms.

The chairperson may create ad hoc or permanent subcommittees, as needed. [L 1973, c 69, pt of §1; gen ch 1985; am L 1990, c 243, §6; gen ch 1993]

" **[§150A-11] Enforcement.** Inspectors shall enforce the provisions of this chapter and related rules promulgated by the department.



Inspectors shall be provided with suitable badges or insignia of office by the department, and shall have power to serve and execute warrants in all matters relating to the quarantine laws, to issue a citation for any violation of this chapter and related rules, and to seize contraband articles throughout the State. [L 1985, c 133, §6]

" **[\$150A-11.5] Entry of private property for enforcement.** Whenever any member of the department of agriculture deems it necessary for the protection of animal or public health, agriculture, or the environment, to enter any land, building, vessel or aircraft for the purpose of seizing, capturing, confiscating or removing any living creature that is prohibited or restricted and without a permit, the member may make complaint to the district judge in whose circuit the alleged violation is occurring, and the district judge may thereupon issue a warrant, directed to any police officer of the circuit, commanding the police officer to take sufficient aid, and being accompanied by the member of the department, to go to the place described in the complaint, and to seize, capture, confiscate or remove, under directions of the member, the prohibited or restricted creature. [L 1992, c 229, §2]

#### **Cross References**

Entry to control or eradicate pests, see §141-3.6.

" **[\$150A-12] Citation and summons.** There shall be printed a form of citation and summons for use in citing violators warning the person to appear and answer the charge against the person at a certain place and at a time within seven days after the citation. The citation and summons shall be so designed to include all necessary information to make it valid and legal within the laws and rules of the State. The form and contents of such citation and summons shall be adopted or prescribed by the district courts.

In every case when a citation and summons is issued, the original of the same shall be given to the accused; provided that the district courts may prescribe the issuance to the accused of a carbon copy of the citation and summons and provide for the disposition of the original and any other copies.

Every citation and summons shall be consecutively numbered and each carbon copy shall bear the number of its original. [L 1985, c 133, §7]

" **[\$150A-13] Administration of oath.** When a complaint is made to any prosecuting officer of the violation of the

provisions of this chapter or the rules promulgated and adopted pursuant thereto, the inspector who issued the citation and summons shall subscribe to the complaint under oath. [L 1985, c 133, §8]

" **§150A-14 Penalty.** (a) Any person who violates any provision of this chapter other than sections 150A-5, 150A-6(3), and 150A-6(4) or who violates any rule adopted under this chapter other than those rules involving an animal that is prohibited or a plant, animal, or microorganism that is restricted, without a permit, shall be guilty of a misdemeanor and fined not less than \$100. The provisions of section 706-640 notwithstanding, the maximum fine shall be \$10,000. For a second offense committed within five years of a prior offense, the person or organization shall be fined not less than \$500 and not more than \$25,000.

(b) Any person who violates section 150A-5 shall be guilty of a petty misdemeanor and fined not less than \$50 and not more than \$5,000. For a second offense committed within five years of a prior offense, the person may be fined not less than \$250 and not more than \$15,000.

(c) Any person who:

- (1) Violates section 150A-6(3) or 150A-6(4), or owns or intentionally transports, possesses, harbors, transfers, or causes the importation of any snake or other prohibited animal seized under section 150A-7(b), or whose violation involves an animal that is prohibited or a plant, animal, or microorganism that is restricted, without a permit, shall be guilty of a misdemeanor and subject to a fine of not less than \$5,000, but not more than \$20,000;
- (2) Intentionally transports, harbors, or imports with the intent to propagate, sell, or release any animal that is prohibited or any plant, animal, or microorganism that is restricted, without a permit, shall be guilty of a class C felony and subject to a fine of not less than \$50,000, but not more than \$200,000; or
- (3) Intentionally imports, possesses, harbors, transfers, or transports, including through interisland or intransisland movement, with the intent to propagate, sell, or release, any pest designated by statute or rule, unless otherwise allowed by law, shall be guilty of a class C felony and subject to a fine of not less than \$50,000, but not more than \$200,000.

(d) Whenever a court sentences a person or organization pursuant to subsection (a) or (c) for an offense which has resulted in the escape or establishment of any pest and caused

the department to initiate a program to capture, control, or eradicate that pest, the court shall also require that the person or organization pay to the state general fund an amount of money to be determined in the discretion of the court upon advice of the department, based upon the cost of the development and implementation of the program.

(e) The department may, at its discretion, refuse entry, confiscate, or destroy any prohibited articles or restricted articles that are brought into the State without a permit issued by the department, or order the return of any plant, fruit, vegetable, or any other article infested with pests to its place of origin or otherwise dispose of it or such part thereof as may be necessary to comply with this chapter. Any expense or loss in connection therewith shall be borne by the owner or the owner's agent.

(f) Any person or organization that voluntarily surrenders any prohibited animal or any restricted plant, animal, or microorganism without a permit issued by the department, prior to the initiation of any seizure action by the department, shall be exempt from the penalties of this section.

(g) For purposes of this section, "intent to propagate" shall be presumed when the person in question is found to possess, transport, harbor, or import:

- (1) Any two or more animal specimens of the opposite sex that are prohibited or restricted, without a permit, or are a pest designated by statute or rule;
- (2) Any three or more animal specimens of either sex that are prohibited or restricted, without a permit, or are a pest designated by statute or rule;
- (3) Any plant or microorganism having the inherent capability to reproduce and that is restricted, without a permit; or
- (4) Any specimen that is in the process of reproduction.  
[L 1985, c 133, §9; am L 1990, c 243, §7; am L 1991, c 104, §2; am L 1992, c 229, §5; am L 1998, c 222, §1; am L 2000, c 211, §§8 to 10; am L 2008, c 101, §2; am L 2010, c 128, §2]

" **[\$150A-15] Failure to obey summons.** Any person who fails to appear at the place and time specified in the citation and summons issued to that person by the inspector upon the person's citation for violation of the quarantine laws or rules shall be guilty of a misdemeanor and, on conviction, fined not more than \$500 or imprisoned not more than six months, or both.

If any person fails to comply with a citation and summons issued to the person, the inspector shall cause a complaint to

be entered against the person and secure the issuance of a warrant for that person's arrest.

When a complaint is made to any prosecuting officer of the violation of any quarantine law or any rule promulgated thereunder, the inspector who issued the complaint and summons shall subscribe to it under oath. [L 1985, c 133, §10; gen ch 1985]

### "PART III. NURSERY STOCK EXPORT SHIPMENTS

**§150A-21 Certification for shipment.** The department may certify as to the pest condition or post treatment of shipments when officially required. Fees may be charged for certificates in certain instances and shall be deposited into the pest inspection, quarantine, and eradication fund. [L 1977, c 114, pt of §4; am L 2010, c 173, §6]

" **[§150A-22] Responsibility for treatment.** Any treatment of nursery stock which may be required under the provisions of law shall be at the risk and at the expense of the owner or persons in charge or in possession thereof at the time of treatment, unless otherwise provided. [L 1977, c 114, pt of §4]

" **§150A-23 Nursery stock certificate.** The department may issue and authorize the use of nursery stock certificates by any shipper complying with its regulation for nursery inspection. Shipments accompanied by these certificates may move to other localities within the county or to other counties without inspection at destination. Nursery stock certificates may be issued for interstate shipments. Fees may be charged for nursery certification and shall be deposited into the pest inspection, quarantine, and eradication fund. Nursery stock certificates shall not be altered or misused.

The department may revoke or suspend the right to use any nursery stock certificate which is issued to any person who fails to comply with requirements for use of the certificate. [L 1977, c 114, pt of §4; am L 2010, c 173, §7]

### "[PART IV. OTHER EXPORTS]

**§150A-31 Certificate for shipment.** The department may certify as to the pest condition of honey bee shipments when health certificates are officially required. Fees to cover the department's certification costs may be charged for health certificates as provided by rule and shall be deposited into the pest inspection, quarantine, and eradication fund. Health

certificates shall not be altered or misused. [L 1996, c 111, §1; am L 2010, c 173, §8]

### **Cross References**

Home-based agriculturally produced honey, see §§328-79, 80.

#### **"PART V. CERTIFIED IMPORTERS OF MICROORGANISMS**

**§150A-41 Microorganism import.** (a) Notwithstanding the permit requirements of sections 150A-5 and 150A-6.3, the board may issue a certificate to an importer of microorganisms authorizing import and possession of microorganisms on the list of restricted microorganisms or unlisted microorganisms referenced in section 150A-6.3; provided that:

- (1) The import and possession is for medical or scientific purposes;
- (2) The microorganisms are contained in a laboratory or other contained system approved by the department;
- (3) The microorganisms are used in a manner that will not be detrimental to agriculture, horticulture, the environment, animals, or humans; and
- (4) The importer is able to meet requirements established by the board,

as further verified through site inspection by the department.

(b) Import by a certified importer of microorganisms other than those listed in the importer's certificate or for uses other than specified for each type of microorganism listed in the certificate shall be pursuant to section 150A-6.3.

(c) A certified importer importing pursuant to certificate shall comply with the provisions of part II other than the permit requirement, as applicable, in particular, the notification, labeling, and inspection requirements of section 150A-5. [L 1999, c 177, pt of §1; am L 2000, c 211, §11]

" **§150A-42 Certificate.** (a) An importer requesting a certificate under this part shall complete and submit an application to the department providing information as required by rule.

(b) Fees may be assessed for the processing and issuance of a certificate and for inspections related to the certificate, as established by rule and shall be deposited into the pest inspection, quarantine, and eradication fund. Fees may vary according to the type of certification issued and the costs incurred for inspections.

(c) A certificate issued under this part shall be valid for no more than two years from date of issuance. A certified

importer may reapply for certification pursuant to subsection (a). [L 1999, c 177, pt of §1; am L 2010, c 173, §9]

" **[§150A-43] Suspension or revocation of certificate.** Any certificate issued pursuant to this part may be suspended or revoked by the department, after hearing, for violation of any certificate requirement or condition or any provision of this chapter or rule adopted under this part. Any order made by the department for the suspension or revocation of a certificate shall be in writing and shall set forth the reasons for the suspension or revocation. The action of the department in suspending or revoking a certificate may be reviewed in the manner provided in chapter 91. [L 1999, c 177, pt of §1]

" **[§150A-44] Summary suspension.** Notwithstanding any law to the contrary, the department may cause the immediate suspension of an importer's certificate, subject to subsequent notice and hearing or other adequate procedures, upon the department's determination that there is an impending danger of escape or release of, or contamination from or exposure to microorganisms imported pursuant to certificate so as to present a threat to public health or safety, animal health, agriculture, horticulture, or the environment, or in the event of a medical emergency or agricultural or ecological disaster resulting from escape or release of, or contamination from or exposure to microorganisms imported pursuant to certificate.

The department may order the summary suspension of the certificate for a period not to exceed twenty days. The order of suspension shall be served upon the certified importer at the same time as the notice of hearing for further suspension or revocation and the hearing shall be scheduled prior to the expiration of the order of suspension. The period of suspension prior to the hearing shall not be extended beyond twenty days except upon the request of the importer for a reasonable continuance to adequately prepare the importer's defense. Any attempt by the importer to continue the certified activity while the certificate has been summarily suspended shall of itself be sufficient to warrant a permanent revocation of the certificate and shall subject the importer to all penalties prescribed by this chapter or any rule or order of the department. [L 1999, c 177, pt of §1]

" **[§150A-45] Emergency remediation.** In conjunction with summary suspension of an importer's certificate, upon the department's determination that there is an impending danger of escape or release of, or contamination from or exposure to microorganisms imported pursuant to certificate so as to present

a threat to public health or safety, animal health, agriculture, horticulture, or the environment, or in the event of a medical emergency or agricultural or ecological disaster resulting from escape or release of, or contamination from or exposure to microorganisms imported pursuant to certificate, the department may, at the expense of the importer, seize, quarantine, remediate, condemn, or destroy the imported microorganisms, or any contaminated material, containment equipment, and laboratory or other contained system approved by the department, as the department in its discretion determines is necessary to address the threat, emergency, or disaster. [L 1999, c 177, pt of §1]

" **[§150A-46] Conditions of importation under certification.**

(a) A certificate issued to an importer under this part is nontransferable.

(b) Every importer issued a certificate shall comply with the requirements of the certificate.

(c) Any department employee or authorized representative may enter the premises under certification at any reasonable time to examine and inspect any microorganism, records, laboratory or other contained system approved by the department, equipment, procedures, manuals, and other related materials pertaining to the microorganism imported pursuant to certificate, and may conduct tests, collect samples, or perform any other duty for the purpose of carrying out and effectuating the purposes of this chapter. [L 1999, c 177, pt of §1]

" **[§150A-47] Penalties.** In addition to penalties that may be applicable under section 150A-14, certified importers are subject to penalties as follows:

(1) A certified importer who violates any of the foregoing sections in this part shall be guilty of a petty misdemeanor and, notwithstanding section 706-640, shall be subject to a fine of not less than \$1,000 and not more than \$10,000; and

(2) A certified importer who intentionally imports a microorganism not allowed by the importer's certification with the intent to propagate, sell, or release the microorganism shall be guilty of a class C felony and, notwithstanding section 706-640, shall be subject to a fine of not less than \$50,000 but not more than \$500,000. [L 1999, c 177, pt of §1]

" **§150A-48 REPEALED.** L 2010, c 173, §11.

"[PART VI.] BIOSECURITY PROGRAM

**[\$150A-51] Biosecurity program; establishment.** The department shall establish a biosecurity program authorized under this chapter that shall interface with other relevant state law; provided that the biosecurity program is not inconsistent with federal law. [L 2008, c 236, pt of §2]

" **[\$150A-52] Objectives of biosecurity program.** The objectives of the biosecurity program shall be to:

- (1) Establish a multi-dimensional system to prevent the entry into the State and interisland movement of pests and prohibited or restricted organisms without a permit; and
- (2) Respond effectively to eradicate, control, reduce, and suppress incipient pest populations and established pests and seize and dispose of prohibited or restricted organisms without a permit. [L 2008, c 236, pt of §2]

" **[\$150A-53] General actions to achieve objectives.** To achieve the objectives of the biosecurity program, the department shall plan for and, within available legislative appropriations, implement the following:

- (1) Work with government agencies and agricultural commodity exporters of other states and countries to establish pre-entry inspection programs under which inbound cargo into the State is inspected at the ports of departure or other points outside the State;
- (2) Establish, operate, or participate in operating port-of-entry facilities where multiple government agencies may inspect, quarantine, fumigate, disinfect, destroy, or exclude as appropriate, articles that may harbor pests or exclude articles that are prohibited or restricted without a permit, with the goals of:
  - (A) Performing inspections in an efficient, effective, and expeditious manner for the government agencies involved and for cargo owners, carriers, and importers; and
  - (B) Providing for the proper and safe storage and handling of cargo, especially agricultural and food commodities, awaiting inspection;
- (3) Develop, implement, and coordinate post-entry measures to eradicate, control, reduce, and suppress pests and, as appropriate, eradicate or seize and dispose of prohibited or restricted organisms without a permit that have entered the State;



- (4) Collaborate with relevant government agencies, agricultural commodity importers, and other persons to examine and develop joint integrated systems to better implement the biosecurity program;
- (5) Improve cargo inspection capabilities and methods, including enhancement of the content and submission requirements for cargo manifests and agricultural commodity ownership and movement certificates;
- (6) Promote the production of agricultural commodities in the State to reduce cargo shipments of imported commodities into the State; and
- (7) Provide public education on the negative effects of pests and prohibited or restricted organisms without a permit, to the environment and economy of the State.  
[L 2008, c 236, pt of §2]

" **[\$150A-54] Biosecurity program; charges; costs.** (a) The department shall set and impose charges for the inspection, quarantine, and eradication of pests in accordance with this chapter and chapter 141. The department shall deposit the charges into the pest inspection, quarantine, and eradication fund established pursuant to section 150A-4.5.

(b) The department shall set the charges at amounts intended to generate revenues that, when combined with federal and other funds, are sufficient to pay for the operating and maintenance cost of the program and debt service on bonds issued to fund facilities constructed for the program. [L 2008, c 236, pt of §2]

" **[\$150A-55] Federal and other funds.** The department shall place high priority on seeking and applying for federal and other funds for the biosecurity program. [L 2008, c 236, pt of §2]

" **[\$150A-56] Schedule of appropriations and expenditures for program.** (a) By January 1, 2009, the department shall prepare a schedule of proposed annual appropriations for the biosecurity program for the ensuing six fiscal years that represents the department's realistic expectation as to the amounts necessary to effectively operate the program, yet remain within the constraints of projected state revenue growth.

(b) By January 1 of each fiscal year thereafter, the department shall update the schedule to include the following information, as applicable, for the immediate past fiscal year, current fiscal year, and ensuing five fiscal years:

- (1) The proposed appropriations submitted or to be submitted by the department to the governor for the biosecurity program;
  - (2) The proposed appropriations submitted or to be submitted by the governor to the legislature in the executive or supplemental budget;
  - (3) The actual appropriations by the legislature; and
  - (4) The actual expenditures.
- (c) The department shall submit each required schedule to the legislature no later than twenty days prior to the convening of each regular session of the legislature.
- (d) The department may submit with each schedule a narrative commenting on the effects of any variance between the actual expenditure for the biosecurity program during a fiscal year and proposed appropriation submitted by the department to the governor for that fiscal year. [L 2008, c 236, pt of §2]

## "[PART VI.] BIOSECURITY PROGRAM

### Note

Invasive species management requirements, including interisland and export database for agricultural commodities. L 2016, c 243, §§3, 6.

**§150A-57 Annual report.** The department shall submit an annual report on the biosecurity program to the legislature no later than twenty days prior to the convening of each regular session of the legislature. The report shall include:

- (1) The schedule required under section 150A-56;
- (2) The status of each activity required by Act 243, Session Laws of Hawaii 2016, including for each activity:
  - (A) All expenditures;
  - (B) Descriptions of and the purposes of any activity-related travel;
  - (C) Workforce allocation; and
  - (D) Measure of effectiveness;
- (3) Summary of interisland inspections and export inspection activities;
- (4) Projections by year of future expenditures and future acreage to be under pest management by crop; and
- (5) Activities yet to be completed, and, if applicable, an explanation why they were not completed. [L 2008, c 236, pt of §2; am L 2016, c 243, §2]