

JAN 20 2022

A BILL FOR AN ACT

RELATING TO ENVIRONMENTAL AND AGRICULTURAL PROTECTION.

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

1 SECTION 1. The legislature finds that to further the
2 State's leadership in addressing climate change, increased
3 environmental and agricultural awareness among travelers to the
4 State is essential in preserving the unique environment of the
5 State. Throughout 2021, an alarming amount of footage
6 circulated on social media of visitors harassing protected
7 marine life. This evidence revealed multiple occasions of
8 individuals touching, violating the physical space, and pursuing
9 marine animals protected under The Endangered Species Act of
10 1973 (ESA). The primary animals targeted were honu, the
11 Hawaiian green sea turtle, and 'ilioholoikauaua, the Hawaiian
12 monk seal. Both animals are endemic to the Hawaiian Islands and
13 are protected under the ESA. The threat of their extinction is
14 directly caused by human interaction and impact on the
15 ecosystem. The 'ilioholoikauaua is one of the most endangered
16 marine animals in the world and is only native to Hawai'i, making
17 our responsibility to protect them of global importance. For



1 both species, time on land is essential for survival and the
2 legislature is now aware that this important fact is being
3 ignored. Honu depend on basking, or resting on land, to
4 regulate their body temperature which can last up to two or
5 three days, and 'ilioholoikauaua spends one-third of their time
6 on land to rest, making safe conditions on land critical for
7 both species. Under the ESA, Congress recognized the importance
8 of protecting vital species and their habits because they are
9 considered the natural heritage of the United States. As stated
10 in the ESA, it is illegal for any person under U.S. jurisdiction
11 to "take" any species listed under this protection. The term
12 "take" means to harass, harm, pursue, hunt, shoot, wound, kill,
13 trap, capture, collect, or attempt to engage in any such
14 conduct.

15 The legislature further finds that it is in the best
16 interest of the State to protect the natural capital that
17 attracts visitors and stimulates the economy including
18 agricultural products, animals, and resources. The increase in
19 acts of disrespect to and ignorance about the environment, many
20 well publicized, have brought necessary attention to the
21 problem. Likewise, the State's longstanding concerns about the



1 transport of plants and animals into the State that can cause
2 damage and destruction to agricultural crops and land remain
3 unabated. Increasing environmental and agricultural awareness
4 among visitors and residents alike will help to preserve the
5 ecological beauty that sustains the State's economy, continue
6 the State's leadership in addressing climate change, and protect
7 the natural legacy of the State for generations to come.

8 Recently, private organizations and one of the counties have
9 initiated voluntary pledges for visitors to understand and
10 commit to responsible tourism, one example being the Island of
11 Hawai'i's Pono Pledge.

12 The purpose of this Act is to establish a mandatory
13 environmental and agricultural affirmation for in-bound
14 travelers to the State where they acknowledge state and federal
15 laws and each individual's responsibility to protect the natural
16 environment and agriculture of the State, that will be
17 incorporated into the existing paper plant and animal
18 declaration form and into any other documentation, electronic or
19 otherwise, that travelers are required to complete in order to
20 enter the State.



SECTION 2. Section 150A-5, Hawaii Revised Statutes, is amended to read as follows:

"§150A-5 Conditions of importation. The importation into the State of any of the following articles, viz., nursery-stock, tree, shrub, herb, vine, cut-flower, cutting, graft, scion, bud, seed, leaf, root, or rhizome; nut, fruit, or vegetable; grain, cereal, or legume in the natural or raw state; moss, hay, straw, dry-grass, or other forage; unmanufactured log, limb, or timber, or any other plant-growth or plant-product, unprocessed or in the raw state; soil; microorganisms; live bird, reptile, nematode, insect, or any other animal in any stage of development (that is in addition to the so-called domestic animal, the quarantine of which is provided for in chapter 142); box, vehicle, baggage, or any other container in which such articles have been transported or any packing material used in connection therewith shall be made in the manner hereinafter set forth:

- (1) Notification of arrival. Any person who receives for transport or brings or causes to be brought to the State as freight, air freight, baggage, or otherwise, for the purpose of debarkation or entry therein, or as



1 ship's stores, any of the foregoing articles, shall,
2 immediately upon the arrival thereof, notify the
3 department, in writing, of the arrival, giving the
4 waybill number, container number, name and address of
5 the consignor, name and address of the consignee or
6 the consignee's agent in the State, marks, number of
7 packages, description of contents of each package,
8 port at which laden, and any other information that
9 may be necessary to locate or identify the same, and
10 shall hold such articles at the pier, airport, or any
11 other place where they are first received or
12 discharged, in such a manner that they will not spread
13 or be likely to spread any infestation or infection of
14 insects or diseases that may be present until
15 inspection and examination can be made by the
16 inspector to determine whether or not any article, or
17 any portion thereof, is infested or infected with or
18 contains any pest. The department may adopt rules to
19 require identification of specific articles on
20 negotiable and non-negotiable warehouse receipts,
21 bills of lading, or other documents of title for



1 inspection of pests. In addition, the department
2 shall adopt rules to designate restricted articles
3 that shall require:

4 (A) A permit from the department in advance of
5 importation; or

6 (B) A department letter of authorization or
7 registration in advance of importation.

8 The restricted articles shall include but not be
9 limited to certain microorganisms or living insects.

10 Failure to obtain the permit, letter of authorization,
11 or registration in advance is a violation of this
12 section;

13 (2) Individual passengers, officers, and crew.

14 (A) It shall be the responsibility of the
15 transportation company to distribute, prior to
16 the debarkation of passengers and baggage, the
17 State of Hawaii plant and animal declaration form
18 to each passenger, officer, and crew member of
19 any aircraft or vessel originating in the
20 continental United States or its possessions or
21 from any other area not under the jurisdiction of



1 the appropriate federal agency in order that the
2 passenger, officer, or crew member can comply
3 with the directions and requirements appearing
4 thereon. All passengers, officers, and crew
5 members, whether or not they are bringing or
6 causing to be brought for entry into the State
7 the articles listed on the form, shall complete
8 the declaration, except that one adult member of
9 a family may complete the declaration for other
10 family members. Any person who defaces the
11 declaration form required under this section,
12 gives false information, fails to declare
13 restricted articles in the person's possession or
14 baggage, or fails to declare in cargo manifests
15 is in violation of this section;

16 (B) Completed forms shall be collected by the
17 transportation company and be delivered,
18 immediately upon arrival, to the inspector at the
19 first airport or seaport of arrival. Failure to
20 distribute or collect declaration forms or to



1 immediately deliver completed forms is a

2 violation of this section; and

3 (C) It shall be the responsibility of the officers
4 and crew of an aircraft or vessel originating in
5 the continental United States or its possessions
6 or from any other area not under the jurisdiction
7 of the appropriate federal agency to immediately
8 report all sightings of any plants and animals to
9 the plant quarantine branch. Failure to comply
10 with this requirement is a violation of this
11 section;

12 (3) Plant and animal declaration form. The form shall
13 include directions for declaring domestic and other
14 animals cited in chapter 142, ~~[in addition to]~~ the
15 articles enumerated in this chapter~~[+]~~, and an
16 environmental and agricultural affirmation that the
17 signatory acknowledges their responsibility to respect
18 and protect the State's environmental and agricultural
19 resources and that they will abide by all state and
20 federal laws, including those that protect endangered
21 plants, animals, and ecosystems;



1 (4) Labels. Each container in which any of the above-
2 mentioned articles are imported into the State shall
3 be plainly and legibly marked, in a conspicuous manner
4 and place, with the name and address of the shipper or
5 owner forwarding or shipping the same, the name or
6 mark of the person to whom the same is forwarded or
7 shipped or the person's agent, the name of the
8 country, state, or territory and locality therein
9 where the product was grown or produced, and a
10 statement of the contents of the container. Upon
11 failure to comply with this paragraph, the importer or
12 carrier is in violation of this section;

13 (5) Authority to inspect. Whenever the inspector has good
14 cause to believe that the provisions of this chapter
15 are being violated, the inspector may:

16 (A) Enter and inspect any aircraft, vessel, or other
17 carrier at any time after its arrival within the
18 boundaries of the State, whether offshore, at the
19 pier, or at the airport, for the purpose of
20 determining whether any of the articles or pests



1 enumerated in this chapter or rules adopted

2 thereto, is present;

3 (B) Enter into or upon any pier, warehouse, airport,
4 or any other place in the State where any of the
5 above-mentioned articles are moved or stored, for
6 the purpose of ascertaining, by inspection and
7 examination, whether or not any of the articles
8 is infested or infected with any pest or disease
9 or contaminated with soil or contains prohibited
10 plants or animals; and

11 (C) Inspect any baggage or personal effects of
12 disembarking passengers, officers, and crew
13 members on aircraft or vessels arriving in the
14 State to ascertain if they contain any of the
15 articles or pests enumerated in this chapter. No
16 baggage or other personal effects of the
17 passengers or crew members shall be released
18 until the baggage or effects have been passed.

19 Baggage or cargo inspection shall be made at the
20 discretion of the inspector, on the pier, vessel, or
21 aircraft or in any quarantine or inspection area.



1 Whenever the inspector has good cause to believe
2 that the provisions of this chapter are being
3 violated, the inspector may require that any box,
4 package, suitcase, or any other container carried as
5 ship's stores, cargo, or otherwise by any vessel or
6 aircraft moving between the continental United States
7 and Hawaii or between the Hawaiian Islands, be opened
8 for inspection to determine whether any article or
9 pest prohibited by this chapter or by rules adopted
10 pursuant thereto is present. It is a violation of
11 this section if any prohibited article or any pest or
12 any plant, fruit, or vegetable infested with plant
13 pests is found;

14 (6) Request for importation and inspection. In addition
15 to requirements of the United States customs
16 authorities concerning invoices or other formalities
17 incident to importations into the State, the importer
18 shall be required to file a written statement with the
19 department, signed by the importer or the importer's
20 agent, setting forth the importer's desire to import



1 certain of the above-mentioned articles into the State

2 and:

3 (A) Giving the following additional information:

4 (i) The kind (scientific name), quantity, and
5 description;

6 (ii) The locality where same were grown or
7 produced;

8 (iii) Certification that all animals to be
9 imported are the progeny of captive
10 populations or have been held in captivity
11 for a period of one year immediately prior
12 to importation or have been specifically
13 approved for importation by the board;

14 (iv) The port from which the same were last
15 shipped;

16 (v) The name of the shipper; and

17 (vi) The name of the consignee; and

18 (B) Containing:

19 (i) A request that the department, by its duly
20 authorized agent, examine the articles
21 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



1 to the movement and transportation of the articles to
2 such place shall be borne by the importer or the
3 importer's agent. If the importer, importer's agent,
4 or transportation company requests inspection of
5 sealed containers of the above-mentioned articles at
6 locations other than where the articles are first
7 received or discharged and the department determines
8 that inspection at such place is appropriate, the
9 department may require payment of costs necessitated
10 by these inspections, including overtime costs;

11 (8) Disinfection or quarantine. If, upon inspection, any
12 article received or brought into the State for the
13 purpose of debarkation or entry therein is found to be
14 infested or infected or there is reasonable cause to
15 presume that it is infested or infected and the
16 infestation or infection can, in the judgment of the
17 inspector, be eradicated, a treatment shall be given
18 such article. The treatment shall be at the expense
19 of the owner or the owner's agent, and the treatment
20 shall be as prescribed by the department. The article
21 shall be held in quarantine at the expense of the



1 owner or the owner's agent at a satisfactory place
2 approved by the department for a sufficient length of
3 time to determine that eradication has been
4 accomplished. If the infestation or infection is of
5 such nature or extent that it cannot be effectively
6 and completely eradicated, or if it is a potentially
7 destructive pest or it is not widespread in the State,
8 or after treatment it is determined that the
9 infestation or infection is not completely eradicated,
10 or if the owner or the owner's agent refuses to allow
11 the article to be treated or to be responsible for the
12 cost of treatment and quarantine, the article, or any
13 portion thereof, together with all packing and
14 containers, may, at the discretion of the inspector,
15 be destroyed or sent out of the State at the expense
16 of the owner or the owner's agent. Such destruction
17 or exclusion shall not be made the basis of a claim
18 against the department or the inspector for damage or
19 loss incurred;

20 (9) Disposition. Upon completion of inspection, either at
21 the time of arrival or at any time thereafter should



1 any article be held for inspection, treatment, or
2 quarantine, the inspector shall affix to the article
3 or the container or to the delivery order in a
4 conspicuous place thereon, a tag, label, or stamp to
5 indicate that the article has been inspected and
6 passed. This action shall constitute a permit to
7 bring the article into the State; and

8 (10) Ports of entry. None of the articles mentioned in
9 this section shall be allowed entry into the State
10 except through the airports and seaports in the State
11 designated and approved by the board."

12 SECTION 3. The department of agriculture, in consultation
13 with the department of business, economic development, and
14 tourism, shall revise the plant and animal declaration form to
15 include the environmental and agricultural affirmation pursuant
16 to section 150A-5, Hawaii Revised Statutes. The revised form
17 shall be in effect for distribution by the airlines to in-bound
18 travelers no later than April 22, 2023.

19 SECTION 4. An environmental and agricultural affirmation,
20 where the signatory acknowledges their responsibility to respect
21 and protect the State's environmental and agricultural resources



1 and that they will abide by all state and federal laws including
2 those that protect endangered plants, animals, and ecosystems,
3 shall be included in any documentation, electronic or otherwise,
4 that travelers are required to complete in order to enter the
5 State; provided that if the only purpose of the documentation is
6 related to the coronavirus disease 2019 (COVID-19), the
7 affirmation shall not be required.

8 SECTION 5. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 6. This Act shall take effect upon its approval.

11
INTRODUCED BY: *Kal Nehd*



S.B. NO. 2164

Report Title:

Environment; Animals; Affirmation; Tourism; Declaration Form; Agriculture; Protection; Endangered; Importation; Department of Agriculture; Department of Business, Economic Development, and Tourism

Description:

Modifies the existing plant and animal declaration form to also require in-bound travelers to the State to acknowledge state laws, federal laws, and individual responsibility to protect the environment and agriculture of the State. Requires all other documents travelers are required to complete to enter the State, except documents only relating to COVID-19, to include an environmental and agricultural affirmation.

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

