

JAN 17 2025

A BILL FOR AN ACT

RELATING TO INVASIVE SPECIES.

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

1 SECTION 1. The legislature finds that, according to the
2 2020 United States Department of Agriculture's Summary of
3 Horticulture and Nursery Products, Hawaii's nursery industry is
4 worth more than \$81,000,000 in local and export sales. Invasive
5 species, including the coconut rhinoceros beetle, little fire
6 ant, and coqui frog, and viruses and pathogens that affect plant
7 life can hamper the productivity, profitability, and prospects
8 of local plant nursery businesses.

9 The legislature further finds that the National Plant Board
10 has recognized plant nurseries as major pathways for the
11 introduction and spread of pests and diseases and has provided a
12 model nursery law with draft language that is sensible for
13 nurseries, regulatory officials, and the public. While most
14 nurseries employ best management practices to protect their
15 stock from high-priority pests, others do not. Consequently,
16 the legislature finds that regulation is necessary to protect
17 the many from the few.



1 The legislature further finds that a program requiring
2 plant nurseries to register with the department of agriculture
3 and prohibiting the sale of pest-infested plants and other items
4 is a common sense approach to protect consumers, agricultural
5 producers, the general public, and the environment.

6 The legislature notes that other states require that plant
7 nurseries be regularly inspected and licensed or certified,
8 including Alabama, which requires an annual inspection
9 certificate for certain sellers of nursery stock. Maryland and
10 Massachusetts also require that nurseries or places where
11 nursery stock is grown, be inspected and certified annually.
12 These states require that certain fees be paid, based on the
13 size of the nursery, to obtain the necessary credentials. Many
14 other states, including Delaware, Kentucky, Michigan, New
15 Hampshire, New Mexico, Ohio, Oregon, and Rhode Island, have
16 similar programs.

17 The legislature also finds that the department of
18 agriculture's existing nursery inspection program established in
19 part III of chapter 150A, Hawaii Revised Statutes, relating to
20 Nursery Stock Export Shipments, and the administrative rules to
21 carry out that part, were last updated in 1981 and are focused



1 on certifications required to export plants from Hawaii to other
2 states. The existing requirements are therefore not a
3 comprehensive program to protect consumers in Hawaii from
4 inadvertently purchasing plants infested with pests.

5 Accordingly, the purpose of this Act is to establish a
6 plant nursery registration program to prevent the spread of
7 pests within the State.

8 SECTION 2. Chapter 150A, Hawaii Revised Statutes, is
9 amended as follows:

10 1. By adding a new part to be appropriately designated and
11 to read:

12 **"PART . PLANT NURSERY REGISTRATION PROGRAM**

13 **§150A-A Definitions.** As used in this part, unless the
14 context requires otherwise:

15 "Best management practices" means processes and actions
16 based on the best available science that provide the most
17 cost-effective and efficacious way to address an issue,
18 including the prevention or reduction of pest and plant disease
19 or pathogen problems.



1 "Effective control" means, when referring to non-quarantine
2 pests, eliminating or reducing a pest to the point of an
3 acceptable economic and environmental risk.

4 "High-priority pest" means a pest, including a plant
5 disease, that poses potential negative impacts to the economy,
6 the environment, or human wealth or welfare to an area in which
7 the pest currently:

8 (1) Is not known to occur; or

9 (2) Has a limited distribution or is being officially
10 controlled.

11 The department may designate different high-priority pests for
12 different islands in the State.

13 "Non-quarantine pest" means a pest, including a plant
14 disease, that is not designated as a high-priority pest with
15 respect to an island and that, if under effective control, does
16 not pose an unacceptable economic or environmental risk. The
17 department may designate different non-quarantine pests for
18 different islands in the State.

19 "Nursery stock" means any plant for planting, propagation,
20 or ornamentation (including plants used to produce cut flowers),
21 including all plants, trees, shrubs, vines, perennials, grafts,



1 cuttings, and buds that may be sold for propagation, whether
2 cultivated or wild, and all viable parts of these plants.

3 "Sale" or "sell" means offering, exposing, or possessing
4 for sale, exchange, barter, or trade.

5 "Standards of nursery cleanliness", with respect to a
6 location where nursery stock is produced, sold, stored, or
7 distributed, means:

- 8 (1) The implementation at the location of any method of
9 treatment required by the department for any pest;
- 10 (2) That nursery stock or other material infested or
11 infected with a high-priority pest at that location is
12 isolated pending treatment or destruction;
- 13 (3) That actions are carried out to the extent that is
14 reasonably necessary to ensure that non-quarantine
15 pests at that location are under effective control;
16 and
- 17 (4) The fulfillment of any other standard to prevent the
18 spread of pests at or from the location, as required
19 by the department for that location.

20 **§150A-B Nursery registration.** (a) Any person directly
21 engaged with the production or sale of nursery stock, including



1 any person that produces or sells nursery stock as part of a
2 commercial landscaping business, shall register with the
3 department using an online registration form developed by the
4 department, which shall also be made available in paper form,
5 before initiating business operations; provided that any person
6 directly engaged in the production or sale of nursery stock
7 before or on the effective date of this Act shall register with
8 the department no later than one year from the effective date of
9 this Act.

10 (b) A person shall renew their nursery registration each
11 year.

12 (c) The department may exempt from the nursery
13 registration requirement any person whose business consists only
14 of retail sales to the ultimate consumer; provided that the
15 total sales of nursery stock does not exceed \$2,500 during a
16 year.

17 (d) A person shall register, pursuant to subsection (a),
18 each location where the person produces, sells, or regularly
19 stores or distributes nursery stock.



1 (e) No person shall be eligible for any certificate or
2 service under part III unless the person makes a registration
3 required by subsection (a).

4 (f) The department shall publish on its website and other
5 appropriate platforms a list of the locations that are
6 registered under this section.

7 **§150A-C Certification.** Each person making a registration
8 for a location pursuant to section 150A-B shall certify to the
9 department that the person:

10 (1) Shall not sell at the location any plant taxa
11 designated by the department as:

12 (A) A restricted plant in violation of the
13 department's sale restriction on that taxa; or

14 (B) A noxious weed;

15 (2) Shall maintain the location, including nursery stock
16 and all other materials, to be free from high-priority
17 pests and document in a log book the dates that
18 actions were taken to ensure that the location is free
19 of high-priority pests, including a description of
20 those actions;



- 1 (3) Shall report to the department any new occurrence of a
2 high-priority pest;
- 3 (4) Shall not sell or distribute nursery stock that is
4 infested or infected with a high-priority pest or
5 non-quarantine pest;
- 6 (5) Shall utilize best management practices to maintain
7 effective control of non-quarantine pests;
- 8 (6) Shall report to the department any occurrence of a
9 taxa, including a plant disease, that is not known to
10 occur in the State;
- 11 (7) Shall implement standards of nursery cleanliness at
12 the location;
- 13 (8) Shall implement any best management practices required
14 by the department for the location; and
- 15 (9) Consents to, and agrees to cooperate with, inspections
16 by the department during reasonable business hours to
17 ensure that the person is in compliance with the
18 certification required by this section.

19 **§150A-D Nursery registration fee.** (a) The department may
20 charge a fee for registration under this part.



1 (b) Any fees collected under this section shall be paid to
2 the department and deposited into the pest inspection,
3 quarantine, and eradication fund under section 150A-4.5.

4 **§150A-E Inspection; quarantine; remedial measures;**
5 **contested cases.** (a) The department may administratively
6 inspect, with or without notice during reasonable business
7 hours, a location registered by a person pursuant to section
8 150A-B, including all nursery stock and other materials at the
9 location.

10 (b) The department may:

11 (1) Conduct inspections pursuant to subsection (a) in
12 response to a complaint alleging the presence of
13 high-priority pests or failure to maintain effective
14 control of non-quarantine pests; and

15 (2) Prioritize and conduct more frequent inspections
16 pursuant to subsection (a) based on its assessment of
17 the location's history of compliance with this part
18 and the location's potential for spreading
19 high-priority pests or non-quarantine pests.

20 (c) If the department, after an inspection authorized
21 under this section or by any other means, finds that a



1 high-priority pest is present in nursery stock or any other
2 material at a location where nursery stock is present, that
3 non-quarantine pests are not under effective control at the
4 location, or that the person who has registered the location
5 pursuant to section 150A-B is otherwise not in compliance with a
6 certification made under section 150A-C, the department may:

7 (1) Require the implementation of specific best management
8 practices or other actions, including treatment;

9 (2) Issue a quarantine order for the affected nursery
10 stock, other material, or location and, if
11 appropriate, a treatment or destruction order for
12 affected nursery stock or material; and

13 (3) Require the affected nursery stock or material to be
14 mitigated by whatever means necessary, including
15 destruction, confiscation, treatment, return shipment,
16 or quarantine, at the expense of the person who
17 registered the location, without any form of
18 compensation from the department or State.

19 (d) During the period that an order issued pursuant to
20 subsection (c) is in effect for nursery stock, other material,
21 or a location, no person shall sell, ship, transport, give away,



1 or otherwise move, alter, or tamper with affected nursery stock
2 or material at the location, other than for activities to
3 mitigate any high-priority pest or other pest or to otherwise
4 comply with the order.

5 (e) If the department issues an order pursuant to
6 subsection (c) for nursery stock, other material, or a location,
7 the department shall provide, in writing, to the owner,
8 operator, or person in charge:

9 (1) Notice that the order has been issued, including a
10 description of the specific nursery stock, other
11 material, or a location that is covered by the order;

12 (2) A description of the specific reasons for the issuance
13 of the order and the actions required to comply with
14 the order; and

15 (3) Notice that the owner, operator, or person in charge
16 may request a subsequent inspection to lift the order;
17 provided that, after the inspection, the department
18 determines that the violation that caused the
19 department to issue the order has been corrected.

20 (f) A person affected by the department's actions under
21 this section may initiate a contested case with the department



1 by submitting to the department a written request for a hearing
2 within thirty days of the date that the department issued the
3 order or notice.

4 **§150A-F Nursery program designation of high-priority pests**
5 **and non-quarantine pests.** (a) Without regard to the notice and
6 public hearing requirements of chapter 91, the board, by order,
7 may designate, and un-designate, taxa as high-priority pests and
8 non-quarantine pests for each island.

9 (b) The board may adopt additions to, or deletions from,
10 the list of taxa designated as high-priority pests or non-
11 quarantine pests by order only if the department, thirty days or
12 more before the effective date of the order, issues a press
13 release, posts the press release on the department's website,
14 and provides by mail or electronic mail notices to each person
15 who has made a timely written request to the department for
16 advance notice of the order or the department's rulemaking
17 proceedings.

18 (c) The press release and notices required by subsection

19 (b) shall include:

20 (1) A statement summarizing the substance of the proposed
21 order, including taxa being added to or deleted from



1 the lists of high-priority pests or non-quarantine
2 pests for each island;

3 (2) A statement that a copy of the proposed order and the
4 proposed exact changes shall be mailed to any
5 interested person who requests a copy upon payment in
6 advance of costs for photocopying, preparing, and
7 mailing the copy;

8 (3) A statement as to where to obtain a copy of the
9 proposed order online or in-person for inspection, or
10 for pick-up after payment in full of any costs for
11 photocopying; and

12 (4) A statement that the department is soliciting comments
13 regarding the proposed order during the next thirty
14 days, where comments may be forwarded to, and where
15 and when the proposed order is scheduled to be
16 discussed.

17 (d) The department may request the advisory committee on
18 plants and animals to advise the board on the proposed order in
19 a noticed, public meeting.

20 (e) The board shall consider the proposed order and all
21 oral and written comments on the proposed order.



1 (f) Upon approval by the board at a noticed, public
2 meeting, the order to adopt additions to or deletions from the
3 lists of high-priority pests and non-quarantine pests for each
4 island shall take effect ten days after the department gives
5 public notice of the order on its website and in a daily or
6 weekly publication of statewide circulation or in separate daily
7 or weekly publications whose combined circulation is statewide.

8 **§150A-G Economic loss or damage.** The State shall not be
9 liable for any economic loss or damages, including loss of
10 income, related to any actions taken by the department pursuant
11 to this part or any rules adopted under this part. Actions
12 include the issuance of treatment, quarantine, or destruction
13 orders for any item.

14 **§150A-H Civil penalties.** (a) Any person who violates a
15 provision of this part or any rule adopted by the department
16 pursuant to this part shall be fined not more than
17 \$ for each separate offense. Each date of violation
18 shall constitute a separate offense. Any action taken to impose
19 or collect the penalty provided for in this subsection shall be
20 considered a civil action.



1 (b) All fines collected pursuant to this section shall be
2 paid to the department and deposited into the pest inspection,
3 quarantine, and eradication fund under section 150A-4.5."

4 2. By adding a new section to part III to be appropriately
5 designated and to read:

6 "§150A- Nursery registration required. No certification
7 or service related to nursery stock may be provided under this
8 part to any person at a location unless that location is
9 registered pursuant to part _____."

10 SECTION 3. Section 150A-53, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**§150A-53 General actions to achieve objectives.** (a) To
13 achieve the objectives of the biosecurity program, the
14 department shall plan for and, within available legislative
15 appropriations or through funding from other sources, implement
16 the following:

17 (1) Work with government agencies and agricultural
18 commodity exporters of other states and countries to
19 establish pre-entry inspection programs under which
20 inbound cargo into the State is inspected at the ports
21 of departure or other points outside the State;



- 1 (2) Establish, operate, or participate in operating port-
2 of-entry facilities where multiple government agencies
3 may inspect, quarantine, fumigate, disinfect, destroy,
4 or exclude as appropriate, articles that may harbor
5 pests or exclude articles that are prohibited or
6 restricted without a permit, with the goals of:
- 7 (A) Performing inspections in an efficient,
8 effective, and expeditious manner for the
9 government agencies involved and for cargo
10 owners, carriers, and importers; and
- 11 (B) Providing for the proper and safe storage and
12 handling of cargo, especially agricultural and
13 food commodities, awaiting inspection;
- 14 (3) Develop, implement, and coordinate post-entry measures
15 to eradicate, control, reduce, and suppress pests and,
16 as appropriate, eradicate or seize and dispose of
17 prohibited or restricted organisms without a permit
18 that have entered the State;
- 19 (4) Collaborate with relevant government agencies,
20 agricultural commodity importers, and other persons to



- 1 examine and develop joint integrated systems to better
2 implement the biosecurity program;
- 3 (5) Improve cargo inspection capabilities and methods,
4 including enhancement of the content and submission
5 requirements for cargo manifests and agricultural
6 commodity ownership and movement certificates;
- 7 (6) Promote the production of agricultural commodities in
8 the State to reduce cargo shipments of imported
9 commodities into the State; and
- 10 (7) Provide public education on the negative effects of
11 pests and prohibited or restricted organisms without a
12 permit, to the environment and economy of the State.
- 13 (b) The department shall establish parameters and
14 construction requirements for biosecurity facilities that
15 provide for and ensure the safety of agricultural and food
16 commodities consumed by Hawaii residents, including cold storage
17 facilities established by private-public partnerships to
18 preserve the quality and ensure the safety of the commodities
19 arriving at the State's airports and harbors.
- 20 (c) The plant nursery registration program established
21 under part _____ :



- 1 (1) Shall be considered to be a part of the biosecurity
- 2 program; and
- 3 (2) May be administered by and enforced using the
- 4 officials and funds available to the biosecurity
- 5 program."

6 SECTION 4. This Act does not affect rights and duties that

7 matured, penalties that were incurred, and proceedings that were

8 begun before its effective date.

9 SECTION 5. New statutory material is underscored.

10 SECTION 6. This Act shall take effect on July 1, 2025.

11

INTRODUCED BY:



S.B. NO. 562

Report Title:

DOA; Invasive Species; Plant Nursery Registry Program; Pests;
Taxa; Quarantine; Control and Eradication; Biosecurity

Description:

Establishes a Plant Nursery Registry Program to regulate the sale of nursery stock. Requires certain plant nurseries to register with the Department of Agriculture.

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