

ACT 69

S. B. NO. 129

A Bill for an Act Relating to the Importation of Plant and Animal Life, Seeds and Soils, and Repealing Part I, Chapter 150, Hawaii Revised Statutes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read:

**“CHAPTER
HAWAII PLANT AND NON-DOMESTIC
ANIMAL QUARANTINE LAW**

PART I. GENERAL PROVISIONS

Sec. -1 Short title. This chapter may be cited as the ‘Hawaii Plant Quarantine Law.’

Sec. -2 Definitions. As used in this chapter the term:

- (1) ‘Department’ means the department of agriculture.
- (2) ‘Board’ means the board of agriculture.
- (3) ‘Chairman’ means the chairman of the board of agriculture, or his duly authorized agents.
- (4) ‘Inspector’ means any employee or official of the department authorized by the board to administer and enforce the provisions of this law.
- (5) ‘Inspect’ means to examine material to ascertain the presence or absence of quarantine pests.

- (6) '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.
- (7) 'Animal' means any invertebrate or vertebrate species of the animal kingdom including but not limited to mammal, bird, fish, reptile, mollusk, crustacean, insect, mite, nematode, protozoan and other invertebrate, other than common domestic animal such as dog and cat.
- (8) '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.
- (9) 'Bacteria' means any unicellular microorganism in the class Schizomycete, exhibiting both plant and animal characteristics, and including the three varieties of bacillus, coccus and spirillum, including agents of Rickettsia except those on or in living man or animal in Hawaii and those in or on processed foods, beverages or pharmaceuticals.
- (10) 'Fungus' means all nonchlorophyll-bearing thallophytes, including rusts, smuts, mildews, molds and yeasts, except those on or in living man or animal in Hawaii and those on or in processed food, beverages, or pharmaceuticals.
- (11) 'Virus' means any of a class of filterable, submicroscopic pathogenic agent, chiefly nucleoprotein in composition but often reducible to crystalline form, and typically inert except when in contact with certain living cells, except those on or in living man, or animal in Hawaii and those on or in processed food, beverages, or pharmaceuticals.
- (12) 'Label' means the written, printed, or graphic matter upon the container of any article as pertaining to plant quarantine laws and regulations.
- (13) 'Vehicle' means any automobile, truck, tractor and similar equipment.
- (14) '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.
- (15) 'Import' means shipment to the State from any point outside of the State.

Sec. -3 Delegation of duties. All authority vested in the board or chairman by virtue of this chapter may with like force and effect be exercised by such employees of the department as the board or chairman may from time to time designate for the purpose.

Sec. -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, 187, 191, 321 and 328.

PART II. REGULATION OF IMPORTATION

Sec. -5 Conditions of importation. The importation 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, live bird, reptile, bacteria, fungus, nematode, virus, insect or 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 other sections); box, vehicle, baggage, barrel, or crate or other container in which such articles have been transported or contained or any packing material used in connection therewith, into the State, shall be made and conducted in the manner and subject to the conditions hereinafter set forth:

- (1) Notification of arrival. Any person, who receives for transport, 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 articles enumerated, 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 his responsible 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 on the dock, pier, wharf, airport, air terminal, or other places, 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, infected with or contains any pest.

In addition, by rules and regulations, the department shall designate restricted articles that shall require a permit to be obtained from the department in advance of importation. The restricted articles shall include, but not be limited to, fungi, bacteria, virus, or living insects. Failure to obtain such permits in advance shall result in the articles being refused entry, or confiscated or destroyed. Any expense or loss in connection therewith shall be borne by the owner or his responsible agent in the State.

- (2) Individual passengers, officers and crew.

- (A) It shall be the responsibility of the transportation company to distribute the State of Hawaii plant and animal declaration forms to each passenger, officer and crew member of any aircraft or vessel originating from the United States or its possession, or from any other areas not under the jurisdiction of the appropriate federal agency prior to arrival in order that the

passenger, officer and crew member can comply with the directions and requirement appearing thereon.

Any adult, guardian of minor or transiting passenger, officer and crew member bringing or causing to be brought for entry into the State the items listed on the form shall complete the declaration. Any person who defaces the declaration form required under this section, gives false information, or fails to declare restricted materials in his possession or luggage or fails to declare in cargo manifests shall be in violation of this section.

- (B) Such completed forms shall be collected by the transportation company and be delivered to the inspector at the first airport or seaport of arrival.
- (3) Plant and animal declaration form. Such forms will include directions for declaring domestic and other animals cited in chapter 142, in addition to the articles enumerated in this chapter.
- (4) Labels. Each and every case, box, package, crate, bale, or bundle containing any of the articles above enumerated, imported into the State, shall have plainly and legibly marked thereon, in a conspicuous manner and place, 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 his responsible 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 package. Upon failure to comply with this paragraph the importer or carrier shall be liable to suffer the penalty for the violation of this section.
- (5) Authority to inspect. Whenever he has good cause to believe that the provisions of this chapter are being violated, the inspector may:
 - (A) Enter any aircraft, ship, vessel, or other carrier, at any time after its arrival within the boundaries of the State, whether offport, offshore, at the dock, pier, wharf, airport or air terminal.
 - (B) Enter into or upon any dock, pier, or wharf, warehouse or depot, airport or air terminal, 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 items listed in this section is infested or infested with any pest or contaminated with soil.
 - (C) Inspect any baggage and personal effects of disembarking passengers, officers and members of crews on aircraft, ships, vessels, or other surface craft arriving into the State to ascertain if they contain any of the articles or pests enumerated in this chapter.

Such baggage inspection shall be made at the discretion of the inspector, on the dock or on the ship, vessel, other surface craft or aircraft or in any quarantine or inspection area. No baggage or other personal effects of the passengers or crew members shall be released until said effects have been passed.

Whenever he has good cause to believe that the provisions of this chapter are being violated, the inspectors may require that any box, bale, crate, bundle, package, truck, bag, suitcase, or other container carried as ship's stores, cargo or otherwise, by any ship, vessel, other surface craft 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 regulations promulgated pursuant thereto is present. If any prohibited article or any pest or any plant, fruit or vegetable infested with plant pests is found, the department may order the return of the article to the place of origin or otherwise dispose of it or such part thereof as necessary to comply with this chapter.

Any expense or loss in connection therewith shall be borne by the owner or his responsible agent in the State.

- (6) Request for importation and inspection. In addition to requirements of the U.S. 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 himself or his responsible agent in the State, setting forth his desire to import certain of the articles above enumerated, into the State, and giving the following additional information: the kind (scientific name), quantity, and description of same; the locality where same were grown or produced; the certification that all animals to be imported are the progeny of captive populations; the port from which the same were last shipped; the name of the shipper; and the name of the consignee thereof. The statement shall also contain a request that the department by its duly authorized agent examine the articles described and an agreement by the importer to be responsible for all costs, charges, or expenses; also 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 for, if any treatment is adjudged necessary. Failure or refusal to file a statement, agreement, or waiver upon request shall be held to be a violation of this section and may, in the discretion of the department, give 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 articles above enumerated or any portion thereof, to a place more suitable for inspection than the dock, pier, wharf, airport, air terminal, depot or other place where they are first received or discharged, authority therefore is granted, and all costs and expenses incident to the movement and transportation of the articles to such place shall be borne by the importer or his responsible agent in the State owning or having charge thereof.
- (8) Disinfection or quarantine. If upon inspection, any article so received or brought to the State for the purpose of debarkation or entry therein is found to be infested or infected, or there is reason-

able 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 his 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 his responsible 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 in the manner described above, or if it is a potentially destructive pest, or not widespread in the State, or after treatment it is determined that the infestation or infection is not completely eradicated, 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 his responsible agent in the State. 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. At the time of arrival, or at any time thereafter, should any article be held for inspection, treatment or quarantine, the inspector shall upon completion of inspection, affix to the article or the container or to the delivery order in a conspicuous place thereon, a tag, label, or stamp to indicate the article has been inspected and passed. This action shall in effect be a permit to bring the article into the State.
- (10) What constitutes importation. The landing of any of the articles for the purpose of inspection or quarantine is not, nor shall it be construed to be, an importation in the sense of giving to the articles so landed any status, or the owner thereof any right or privilege, incident to articles which have actually been imported into the State; but in legal effect the articles so landed for the purpose of inspection shall be construed to be still without the State seeking entry thereinto, and shall not, in whole or in part, be considered suitable for importation into the State unless a tag, label, or stamp has been affixed thereon by the inspector as provided in section -5(9).
- (11) Exceptions to right to import. Nothing in this chapter contained shall permit the importation of any animal or article, from any particular place, if the same, or any of them, has, by special rule or regulation of the department been prohibited.
- (12) Ports of entry. None of the articles enumerated in this section shall be allowed entry into the State except through the air and sea ports in the State designated and approved by the board.
- (13) Enforcement; citation and summons; penalty. Any officer or employee of the department, authorized and designated by the board to enforce the provisions of this chapter, and all rules and regulations promulgated and adopted by the department pursuant thereto, may issue a citation to any person for violation of any provision of this chapter or of any rule or regulation promulgated and adopted pur-

suant thereto, and issue to him a summons summoning him to appear at a certain place at a time within seven days of such citation, to answer the charges against him.

- (A) Form of citation and summons. There shall be printed a form of citation and summons for use in citing violators of this chapter and regulations promulgated pursuant thereto. The form and contents of such citation and summons shall be as adopted or prescribed by the district courts.

In every case when a citation and summons are 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 be consecutively numbered and each carbon copy shall bear the number of its respective original.

- (B) Administration of oath. When a complaint is made to any prosecuting officer of the violation of the provisions of this chapter or the rules and regulations promulgated and adopted pursuant thereto, the officer or employee who issued the citation and summons shall subscribe to the complaint under oath.
- (C) Penalty. Any person who violates any section of this chapter shall be fined not more than \$500 or imprisoned not more than six months, or both.

Sec. -6 Soil, snakes, injurious insects, etc., importation prohibited.

All persons are prohibited from receiving for transportation, bringing, or causing to be brought to the State, for the purpose of debarkation or entry thereinto, any of the following named articles:

- (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 commodity with soil adhering thereto.
- (3) Any live snake, flying fox, fruit bat, Gila monster, or injurious insect or any other animal 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; provided 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 purposes of exhibition in a public zoological park, but only after the board is presented with satisfactory evidence that the sex of the snakes was established to be male prior to the shipment, and after the board gives written approval conditioned upon such terms as the board may deem necessary, which terms shall include the continuing supervision and control by the board and shall provide that the board may determine the manner in which such

snakes shall be disposed of or destroyed. In case of the death of one or both snakes, the government agency may import and maintain replacements subject to the above conditions.

- (4) The board shall maintain a list of animals and plants which may be imported into the State.

Sec. -7 Disposition. (a) Any plant, plant product or any commodity contaminated with soil which may be brought to the State contrary to section -6, shall be refused admittance and the same may, in the discretion of the inspector, be seized and treated, destroyed, or excluded at the expense of the owner or his responsible agent in the State.

(b) Any or all living creatures mentioned in section -6 brought to the State shall be seized immediately upon discovery and be destroyed, donated to a governmental zoo, or sent out of the State, at the discretion of the department; any expense or loss in connection therewith to be borne by the owner or his responsible agent. The foregoing shall not apply to any snake which is brought into the State by a governmental agency solely for the purpose of exhibition in a public zoological park pursuant to section -6(3).

(c) Whenever any living creature introduced or admitted under rules and regulations of the department escapes, or is found to be free from confinement, the department shall confiscate, capture or have it and its progeny captured 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 5 days at the discretion of the department. Any expense or loss in connection therewith shall be borne by the owner or his responsible agent.

Sec. -8 Transporting in State. No fungi, bacteria, virus, living insects or soil, nursery stock, tree, sugarcane, shrub, plant, flower, vine, graft, scion, bud, seed, root, fruit, fruit pit, vegetable, leaf, nut, or moss shall be transported from one island within the State to another island therein, or to one locality from another on the same island or along the highways thereof, unless approved by the department.

Certain animals 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.

Sec. -9 Rules and regulations. The department shall have the authority to carry out and effectuate the purposes of this chapter by rules and regulations.

Sec. -10 Advisory committee on plants and animals. There shall be an advisory committee on plants and animals composed of the chairman of the board or his representative who shall be chairman of the committee, the chairman 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 chairman. 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 chairman may create ad hoc or permanent subcommittees as needed.”

SECTION 2. Severability. If any provision of this chapter is declared invalid, or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of this chapter and applicability thereof to other persons and circumstances shall not be affected.

SECTION 3. Part I of Chapter 150, Hawaii Revised Statutes, is repealed.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 11, 1973.)