

A Bill for an Act Relating to Plant and Non-Domestic Animal Quarantine.

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

SECTION 1. Chapter 150A, Hawaii Revised Statutes, is amended by adding a new part to read as follows:

“PART V. CERTIFIED IMPORTERS OF MICROORGANISMS

§150A-A Microorganism import. (a) Notwithstanding the permit requirements of sections 150A-5 and 150A-6, the board may issue a certificate to an importer of microorganisms authorizing import and possession of microorganisms, other than microorganisms on the lists of nonrestricted microorganisms or prohibited microorganisms referenced in section 150A-6; 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.

(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.

§150A-B 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. 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).

§150A-C 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.

§150A-D 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.

§150A-E 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.

§150A-F Conditions of importation under certification. (a) A certificate issued to an importer under this part is non-transferable.

(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.

§150A-G 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.

§150A-H Microorganism import certification revolving fund. (a) There is established in the state treasury the microorganism import certification revolving

fund which shall be administered by the department for the purposes of this section. The microorganism import certification revolving fund shall consist of:

- (1) Legislative appropriations to the microorganism import certification revolving fund;
- (2) Certification and inspection fees, as authorized by rule;
- (3) All fines collected pursuant to this part;
- (4) Reimbursements for any costs paid by the department to remediate any impending danger or actual emergencies involving microorganisms imported pursuant to certificate;
- (5) All interest earned on or accrued to moneys deposited in the microorganism import certification revolving fund;
- (6) Grants and gifts to the microorganism import certification revolving fund; and
- (7) Any other moneys made available to the microorganism import certification revolving fund from other sources;

(b) The balance in the microorganism import certification revolving fund shall not exceed \$500,000. All amounts in excess of \$500,000 shall be deposited to the credit of the state general fund.

(c) The department shall expend moneys in the microorganism import certification revolving fund for the development, administration, and operation of the microorganism import certification program, including but not limited to personnel, training, materials and equipment, compliance monitoring activities, educational workshops for certified importers and applicants for certification, evaluation and remediation of impending threat or actual emergencies related to microorganisms imported pursuant to certificate, and for any other purpose deemed necessary to carry out the purposes of this part.

(d) The department may set fees, by rule, for educational workshops for certified importers or applicants for certification.”

SECTION 2. Section 150A-2, Hawaii Revised Statutes, is amended by amending the definitions of “algae”, “bacteria”, “fungus”, “protozoa”, and “virus” to read as follows:

““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[, and those in certain microbial products or used as food or for food preparation as specified by rule].

“Bacteria” means any prokaryotic or [archaeobacterial] archaeobacterial organism, except those bacteria on or in humans or animals in Hawaii, and those in or on processed foods, beverages, or pharmaceuticals[, and those in certain microbial products or used as food or for food preparation as specified by rule].

“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[, and those in certain microbial products or used as food or for food preparation as specified by rule].

“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[, and those in certain microbial products as specified by rule].

“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[, and those in certain microbial products as specified by rule].”

SECTION 3. Section 150A-6, Hawaii Revised Statutes, is amended to read as follows:

“§150A-6 Soil, plants, animals, etc., importation or possession prohibited. (a) 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 quantities¹ 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 that, notwithstanding the list of animals prohibited entry into the State, the department may bring into and maintain in the State one live, sterile brown tree snake 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) The² 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.
- (b) The board shall maintain:
 - (1) A list of [conditionally-approved] conditionally approved animals [and microorganisms] that require a permit for import into the State;
 - (2) A list of restricted animals [and microorganisms] that require a permit for both import into the State and possession; and
 - (3) A list of animals [and microorganisms] that are prohibited entry into the State;

provided that the board shall adopt rules, pursuant to chapter 91, to establish an ad hoc panel 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.

Animals [and microorganisms] on the lists of [conditionally-approved] conditionally approved and restricted animals [and microorganisms] shall be im-

ported only by permit. Any animal [or microorganism] that is not on the lists of [conditionally-approved] conditionally approved, restricted, or prohibited animals [and microorganisms] 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 [or a microorganism] that is not on the lists of prohibited, restricted, or [conditionally-approved] conditionally approved animals [or microorganisms], for the purpose of remediating medical emergencies or agricultural or ecological disasters, or conducting medical or scientific research in a manner that the animal [or microorganism] will not be detrimental to agriculture, the environment, or humans if the importer of the animal [or microorganism] can meet permit requirements [consistent with Centers for Disease Control and National Institute of Health guidelines or other guidelines] 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 list of prohibited, restricted, or [conditionally-approved] 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. [All]

(c) The board shall maintain:

- (1) A list of nonrestricted microorganisms allowed entry into the State without a permit but which are subject to the notification, labeling, and inspection requirements of section 150A-5;
- (2) A list of restricted microorganisms that require a permit for import into the State and possession, except as otherwise provided in part V; and
- (3) A list of microorganisms that are prohibited entry into the State, except that the department may issue an emergency permit on a case-by-case basis to a state or federal agency or state university for the import and possession of a microorganism on the list of prohibited microorganisms for the purpose of remediating medical emergencies or agricultural or ecological disasters pursuant to the board's determination that:
 - (A) An emergency or disaster exists; and
 - (B) The importer is able to meet permit requirements consistent with Centers for Disease Control and Prevention and National Institutes of Health guidelines or other guidelines as determined by the board.

No emergency permit may be issued until the board, without regard to rule requirements for advisory review, obtains advice from qualified persons with relevant expertise.

Except as otherwise provided in part V, any microorganism that is not on the lists of nonrestricted, restricted, or prohibited microorganisms may not enter the State until the board's review and determination for placement on one of those lists; provided that pending the listing by rule of an unlisted microorganism determined by the board to be allowed for import, the department may issue a special permit on a case-by-case basis for the import and possession of the microorganism for purposes approved by the board if the microorganism is to be used in a manner that will not be detrimental to agriculture, horticulture, the environment, animals, and humans, and if the importer is able to meet conditions established by the board.

(d) Except as otherwise provided herein, all permits referenced in this section shall be issued pursuant to rules. Any violation of the conditions listed on the permits shall be a violation of this section.

(c) (e) The board shall maintain a list of restricted plants and a list of prohibited plants. Restricted plants shall not be imported into the State without a permit issued pursuant to rules, and any violation of the conditions listed on the permit shall be a violation of this section.

[(d)] (f) No person shall possess, propagate, sell, transfer, or harbor any plant, animal, or microorganism included on the list or lists of prohibited plants, animals, and microorganisms maintained by the board under this section, except as allowed by the board 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, animal or public health, and the environment.

Under the circumstances described in this subsection, the board may permit possession of the individual plant, animal, or microorganism through its registration with the department while still prohibiting the same species of plant, animal, or microorganism from importation, propagation, transfer, and sale.

[(e)] (g) 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 subsections (b), [and] (c)[;], and (e); provided that the board shall adopt rules pursuant to chapter 91 to establish methods to obtain public input and to notify the public as to any additions to or deletions from the lists required under subsections (b), [and] (c)[.], and (e).”

SECTION 4. Section 150A-7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) It is a violation of section 150A-6 to bring to or possess in the State any living creature that is prohibited, or restricted and without a permit issued by the department, except as expressly provided in that section or in part V, and such a 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. [The foregoing shall not apply to any snake which is brought into the State by the department for the purpose of research or training of snake detector dogs, or by a government agency solely for the purpose of exhibition in a government zoo pursuant to section 150A-6(a)(3).]”

SECTION 5. Section 150A-7.5, Hawaii Revised Statutes, is amended to read as follows:

“[[§150A-7.5]] **User fees.** Fees may be assessed for the processing and issuance of [import] permits issued by the department under this part and for inspections related to [import] permit conditions, as established by rule.”

SECTION 6. Section 150A-9.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Interim rules adopted by the department pursuant to this section shall be effective as stated by such rules; provided that any interim rule shall be published at least once [in each newspaper of general circulation in the State] statewide within [five] ten days of issuance; and provided further that no interim rule shall be effective for more than one hundred eighty days.”

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of \$0 or so much thereof as may be necessary for fiscal year 1999-2000 and the same sum or so much thereof as may be necessary for fiscal year 2000-2001 to be deposited into the Microorganism Import Certification Revolving Fund for the development, administration, and operation of the microorganism import certification program.

ACT 177

SECTION 8. There is appropriated out of the Microorganism Import Certification Revolving Fund the sum of \$100,000 or so much thereof as may be necessary for fiscal year 1999-2000 and the same sum or so much thereof as be necessary for fiscal year 2000-2001 for the development, administration, and operation of the microorganism import certification program.

SECTION 9. The sums appropriated shall be expended by the department of agriculture for the purposes of the Microorganism Import Certification Revolving Fund.

SECTION 10. In codifying the new sections added by this Act, the revisor of statutes shall substitute the appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 11. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 12. This Act shall take effect on July 1, 1999.

(Approved July 1, 1999.)

Notes

1. So in original.
2. Prior to amendment "board" appeared here.