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## A BILL FOR AN ACT

RELATING TO BIRDS.

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

1           SECTION 1. The legislature finds that, for more than a  
2 decade, residents of certain areas of the State have suffered  
3 the effects of excessive feeding of feral birds. These  
4 residents have reported bird fecal matter covering cars, roofs,  
5 walkways, and solar panels. After a light rain and direct sun,  
6 the odor is unbearable. After the bird fecal matter dries, it  
7 blows in the wind, exacerbates breathing problems, and triggers  
8 allergies. Residents who have suffered chronic runny noses,  
9 watery eyes, sneezing, and fungal and bacterial infections have  
10 seen these symptoms disappear after moving away. Voluminous  
11 bird droppings have also decreased property values by corroding  
12 home surfaces and making affected communities unpleasant places  
13 in which to live.

14           The legislature further finds that feeding feral birds  
15 dramatically increases non-native bird populations, which in  
16 turn interferes with native wildlife. Feral birds serve as  
17 reservoirs of infection for avian diseases such as avian pox and



1 avian malaria, as well as numerous species of parasites such as  
2 lice and mites.

3 In 2013, Act 269, Session Laws of Hawaii 2013, was enacted  
4 to provide a remedy for individuals harmed by the excessive  
5 feeding of feral birds by declaring the odors and filth  
6 resulting from feeding feral birds to be a nuisance. However,  
7 the department of health has declined to take action pursuant to  
8 section 322-1(2), Hawaii Revised Statutes, against individuals  
9 who feed feral birds because, in the department's opinion, the  
10 odor and filth resulting from the excessive feeding of feral  
11 birds does not rise to the applicable statutory level of being  
12 dangerous or injurious to health.

13 The legislature further finds that the State's failure to  
14 act to resolve this issue has caused many residents to consider  
15 exterminating feral birds on their property as a remedy.

16 The purpose of this Act is to prohibit the feeding of an  
17 excessive number of feral birds without requiring the department  
18 of health to determine that bird waste is dangerous or injurious  
19 to health.



1 SECTION 2. Chapter 321, Hawaii Revised Statutes, is  
2 amended by adding a new section to part I to be appropriately  
3 designated and to read as follows:

4 "§322- Excessive feeding of feral birds; prohibited.

5 (a) No person shall feed or shall permit or allow the placement  
6 or discarding of food or food by-products in a manner that a  
7 reasonable person would expect to result in the lingering,  
8 roosting, or congregating of twenty-five or more feral birds  
9 within a twenty-foot radius.

10 (b) This section shall not apply to the feeding of any:

11 (1) Carrier pigeon, racing pigeon, or show pigeon in the  
12 possession of a person who has been issued a valid  
13 pigeon ownership permit pursuant to section 142-102;

14 (2) Migratory bird in compliance with a migratory bird  
15 permit issued pursuant to 50 Code of Federal  
16 Regulations part 21, as amended;

17 (3) Bird that is primarily kept in a cage or other  
18 enclosed container or structure and is thereby  
19 prevented from flying away;

20 (4) Bird any food containing any avian reproductive  
21 control product, by a licensed pest control operator,



1           property owner, or agent of a property owner, pursuant  
2           to a permit issued by the department of health;  
3           (5) Poultry at a farming operation in a manner consistent  
4           with generally accepted agricultural and management  
5           practices; and  
6           (6) Bird by any federal, state, or county employee, their  
7           agent, cooperator, or permittee, engaged or aiding in  
8           the discharge of an official duty.  
9           (c) Prima facie evidence of a violation of subsection (a)  
10 or of a cease and desist order issued under section 322-2 or  
11 322-3 shall include:  
12           (1) A certificate, sworn to or affirmed by an individual  
13           authorized to enforce this section, based upon  
14           inspection of the premises and witnessing a violation;  
15           or  
16           (2) A photograph or video recording gathered or received  
17           by an individual authorized to enforce this section  
18           evidencing a violation.  
19           (d) For purposes of this section:  
20           "Carrier pigeon" shall have the same meaning as in section  
21 142-101.



1       "Feral bird" means any bird living in a wild and  
2 undomesticated state.

3       "Poultry" shall have the same meaning as in section 161-3.

4       "Racing pigeon" shall have the same meaning as in section  
5 142-101.

6       "Show pigeon" shall have the same meaning as in section  
7 142-101."

8       SECTION 3. Section 322-1, Hawaii Revised Statutes, is  
9 amended to read as follows:

10       **"§322-1 Removal, prevention.** The department of health and  
11 its agents shall examine into all nuisances, foul or noxious  
12 odors, gases or vapors, water in which mosquito larvae exist,  
13 sources of filth, and all causes of sickness or disease, on  
14 shore, and in any vessel, which may be known to them or brought  
15 to their attention, which in their opinion are dangerous or  
16 injurious to health, and into any and all conditions created or  
17 existing which cause or tend to cause sickness or disease or to  
18 be dangerous or injurious to health, and shall cause the same to  
19 be abated, destroyed, removed, or prevented.

20       For purposes of this part, a nuisance shall include[+]



1        ~~(1)~~ ~~Toxic]~~ toxic materials that are used in or by-products  
 2                    of the manufacture or conversion of methamphetamine,  
 3                    and clandestine drug labs that manufacture  
 4                    methamphetamine [~~;~~ and

5        ~~(2)~~ ~~Odors and filth resulting from a person feeding feral~~  
 6                    ~~birds]."~~

7            SECTION 4. Section 322-2, Hawaii Revised Statutes, is  
 8 amended to read as follows:

9            "**§322-2 Ordering owner to remove.** Whenever any [~~such~~]  
 10 nuisance, foul or noxious odors, gases or vapors, water in which  
 11 mosquito larvae exist, source of filth, or cause of sickness or  
 12 disease is found on private property, the department of health  
 13 shall cause notice to be given to the owner to remove and abate  
 14 the same at the owner's own expense within such reasonable time  
 15 as the department may deem proper. Whenever any violation of  
 16 section 322- is found on private property, the department of  
 17 health shall cause notice to be given to the owner to cease any  
 18 further violation of section 322- . A duplicate of the notice  
 19 so given shall be left with one or more of the tenants or  
 20 occupants of the premises. If the premises are unoccupied,  
 21 notice shall be mailed to the last known place of residence of



1 the owner if residing in the State. If the owner resides out of  
2 the State or cannot be reached with notice speedily, notice left  
3 at the house or posted on the premises shall be sufficient. If  
4 the owner thus notified does not comply with the notification or  
5 order of the department, or its agent, within the time  
6 specified, the department or its agent may apply to the district  
7 court of the circuit in which the property is situated for an  
8 order authorizing the department to execute and carry out the  
9 notice or for an order to abate the nuisance and remove,  
10 destroy, or prevent the cause of the foul or noxious odors,  
11 gases or vapors, water in which mosquito larvae exist, source of  
12 filth, or cause of sickness or disease, or other thing  
13 detrimental to public health[-] or to prevent the further  
14 violation of section 322- .

15 The department may recover by appropriate proceedings the  
16 expenses incurred by it in the abatement, removal, destruction,  
17 or prevention, from any person who has caused or allowed the  
18 nuisances, source of foul or noxious odors, gases or vapors,  
19 water in which mosquito larvae breed, source of filth, or cause  
20 of sickness or disease, or other thing detrimental to the public  
21 health, or violation of section 322- , and from any owner,



1 tenant, or occupant of the premises, who, after notice, has  
2 failed to abate, remove, destroy, or prevent the nuisance,  
3 source of foul or noxious odors, gases or vapors, water in which  
4 mosquito larvae exist, source of filth, or cause of sickness or  
5 disease, or other thing detrimental to the public health within  
6 the time specified in the notice[-], or has failed to cease  
7 further violation of section 322- . In no case shall the  
8 department or any officer or agent thereof be liable for costs  
9 in any action or proceeding that may be commenced in pursuance  
10 of this part."

11 SECTION 5. Section 322-3, Hawaii Revised Statutes, is  
12 amended to read as follows:

13 "**§322-3 Nuisance on public property.** Whenever any  
14 nuisance, foul or noxious odors, gases or vapors, water in which  
15 mosquito larvae exist, source of filth, or cause of sickness or  
16 disease or violation of section 322- is found on public  
17 property or on a public highway, street, lane, alley, or other  
18 public place, notice shall be given by the department of health,  
19 or its agent, to the person officially in charge thereof, and  
20 the person shall be notified to abate, destroy, remove, [~~or~~]  
21 prevent, or cease the same. In case of failure to comply with





1 the notice, the mode of procedure shall be the same as  
2 [hereinbefore] provided in case of private persons in section  
3 322-2."

4 SECTION 6. Section 322-4, Hawaii Revised Statutes, is  
5 amended to read as follows:

6 "§322-4 **Entering lands, buildings, etc.** Whenever any  
7 member of the department of health deems it necessary for the  
8 preservation of the lives or health of the public to enter any  
9 land, building, vessel, or aircraft for the purpose of examining  
10 into, abating, destroying, removing, or preventing any nuisance,  
11 source of foul or noxious odors, gases or vapors, water in which  
12 mosquito larvae exist, source of filth, or cause of sickness or  
13 disease, or other thing detrimental to the public health, or to  
14 enforce section 322- , and is refused such entry, the member  
15 may make complaint to the district judge in whose circuit the  
16 nuisance, source, place, or cause is, and the district judge may  
17 thereupon issue a warrant, directed to any police officer of the  
18 circuit, commanding the police officer to take sufficient aid,  
19 and, being accompanied by the member of the department, between  
20 the hours of sunrise and sunset, to repair to the place  
21 described in the complaint, and to abate, destroy, remove, or



1 prevent, under the directions of the member, the nuisance,  
2 source, or cause."

3 SECTION 7. Section 322-6, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "§322-6 Who to report nuisances[-] and violations. The  
6 sheriff, all officers of police, and physicians shall report to  
7 the department of health, or its nearest authorized agent, the  
8 existence of any nuisance injurious to the public health[-] or  
9 any violation of section 322-\_\_\_, of which any of them may be  
10 cognizant, as soon as possible after it comes to their  
11 knowledge. Any individual may report to the department of  
12 health, or its nearest authorized agent, the existence of any  
13 nuisance injurious to the public health or violation of section  
14 322-\_\_\_ as soon as possible after the individual learns of the  
15 existence of the nuisance[-] or violation."

16 SECTION 8. Section 322-8, Hawaii Revised Statutes, is  
17 amended by amending subsection (a) to read as follows:

18 "(a) Any person who violates this part or any rule adopted  
19 by the department of health to implement this part shall be  
20 fined not more than \$10,000 for each separate offense[-];



1 provided that the minimum fines for violation of section 322-  
2 shall be as follows:

3       (1) For a second violation within five years of a previous  
4       violation, a fine of not less than \$100;

5       (2) For a third violation within five years of the last  
6       violation, a fine of not less than \$250;

7       (3) For a fourth violation within five years of the last  
8       violation, a fine of not less than \$500;

9       (4) For a fifth violation within five years of the last  
10       violation, a fine of not less than \$1,000;

11       (5) For a sixth violation within five years of the last  
12       violation, a fine of not less than \$2,500; and

13       (6) For a sixth or subsequent violation within five years  
14       of the last violation, a fine of not less than \$5,000.

15 Any action taken to collect the penalty provided for in this  
16 subsection shall be considered a civil action."

17       SECTION 9. This Act does not affect rights and duties that  
18 matured, penalties that were incurred, and proceedings that were  
19 begun before its effective date.

20       SECTION 10. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.



# H.B. NO. 576

1 SECTION 11. This Act shall take effect on July 1, 2019.

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INTRODUCED BY:

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JAN 18 2019



# H.B. NO. 576

**Report Title:**

Feral Birds; Excessive Feeding; Prohibited

**Description:**

Prohibits the feeding of excessive numbers of feral birds.  
Provides exceptions. Establishes penalties.

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

