



State of Hawaii
DEPARTMENT OF AGRICULTURE
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**TESTIMONY OF RUSSELL KOKUBUN
CHAIRPERSON, BOARD OF AGRICULTURE**

BEFORE THE SENATE COMMITTEE ON JUDICIARY
APRIL 3, 2012
9:30 A.M.
CONFERENCE ROOM 016

COMMENTS

HOUSE BILL NO 1524 HOUSE DRAFT 2, PROPOSED SENATE DRAFT 2
RELATING TO AGRICULTURE

Chairperson Hee and Members of the Committee:

Thank you for the opportunity to provide testimony on HB 15244 H.D. 2, Proposed S.D.2. This bill strengthens the existing law to include on the invoice, the name, address and telephone number, license plate number of the vehicle used to deliver the commodity; name and address of the farm; name and address of the consignee and signature of the seller; and requires proof of identification of the sellers of agricultural commodities. Further the bill makes the failure to retain the required certificate of ownership or possession of agricultural commodities without the certificate of ownership while in possession of agricultural commodities as prima facie evidence for the offense of theft. The bill also amends the Hawaii Penal Code, Chapter 703, Hawaii Revised Statutes, which adds the failure to maintain a certificate of ownership and possession of agricultural commodities without ownership certificates to theft in the second degree.

The department supports the intent of the bill, however, there are areas within the bill that are unclear that will require further clarification.



1. Section 1, page 3, line 2 refers “to any person as described in section 145-25” however, in the bill, section 145-25 is amended and removes any reference to “state or county law enforcement officer, and any officer or employee of the department of agriculture..”.
2. Section 3. Proposes “§145-25 **Enforcement; criminal penalties.** Violations of this part or any rule adopted pursuant thereto shall be criminal offenses as follows: (1) A violation in which the value of the agricultural commodity exceeds \$100 shall be a class C felony ...”. At what “value” will the stolen agricultural commodities be appraised at (farm gate value, wholesale value, retail value, etc.) in order to determine the level of crime committed?
3. Section 5 references offense of theft in the second degree of “agricultural commodities” in section 708-831 (e), Hawaii Revised Statutes Hawaii Penal Code, however, there currently is no definition established for “agricultural commodities” in the Hawaii Penal Code. The definition in chapter 708, Hawaii Revised Statutes refers to “agricultural equipment, supplies, or products”, which includes commercial agricultural products, however there is no definition for “agricultural commodities”. In addition,
4. Section 5. “§708-831 (e) A person commits the offense of theft in the second degree if the person commits theft: ...of agricultural commodities marketed for commercial purposes...” This implies that the offense would only be restricted to theft of agricultural commodities being sold, such as at wholesale, retail, etc. and would not apply to theft at the production site.

Thank you for the opportunity to testify on this measure.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2012**

ON THE FOLLOWING MEASURE:

H.B. NO. 1524, H.D. 2, S.D. 1, Proposed S.D. 2, RELATING TO AGRICULTURAL THEFT

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Tuesday, April 3, 2012 **TIME:** 9:30 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): David M. Louie, Attorney General, or
Lance M. Goto, Deputy Attorney General

Chair Hee and Members of the Committee:

The Department of the Attorney General (the "Department") has concerns about this bill and submits comments.

The purpose of this bill is to provide greater protection from the theft of agricultural commodities by: (1) requiring proof of identification from sellers of agricultural commodities; (2) establishing criminal penalties for failure to maintain a certificate of ownership of agricultural commodities; and (3) making theft of agricultural commodities a form of theft in the second degree.

The Department has concerns about the new offense involving the theft of agricultural commodities. The offense is not clearly defined and does not provide adequate notice of the prohibited conduct. On page 7, lines 12-15, the bill provides that a person commits theft in the second degree if the person commits theft:

Of agricultural commodities marketed for commercial purposes and for which the person has failed to maintain a certificate of ownership as required pursuant to section 145-22.

"Agricultural commodity" is not defined in chapter 708, Hawaii Revised Statutes (HRS), but it is defined in section 145-21, HRS, to mean "any fruit, nut, or vegetable that is the food product of any tree, vine, or plant, or any aquacultural, horticultural, silvicultural, or floricultural product."

The phrase "marketed for commercial purposes," however, is vague and undefined. It could be referring to an agricultural commodity that is generally known to be marketed for

commercial purposes. Or, it could be referring to agricultural commodities that were being marketed for commercial purposes at the time of the theft offense.

The offense also requires that the theft be of agricultural commodities "for which the person has failed to maintain a certificate of ownership as required pursuant to section 145-22." It is not clear why this additional element is necessary for the commission of the theft offense when the offense already requires proof that the person committed theft of agricultural commodities. A thief will not be able to fill out a certificate with the necessary seller and buyer information.

The Department also notes that on page 3, at line 2, the reference to "section 145-25" is inaccurate, as section 145-25 is being amended in section 3 of the bill to delete any reference to enforcement personnel of the Department of Agriculture. Perhaps the deleted wording may replace the reference to section 145-25, such that the last sentence of subsection (d), that begins on the bottom of page 2 and ends on page 3, line 2, reads as follows:

One of the copies of the certificate shall be presented upon request to a state or county law enforcement officer or other officer, employee, or any other person [as described in section 145-25.] authorized and designated by the board of agriculture to investigate and enforce this chapter and all rules adopted by the department pursuant to this chapter.

We respectfully request that the Committee amend the bill to address these concerns.



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Tuesday, April 3, 2012
9:30 am
Conference Room 16
Senate Committee on Judiciary and Labor
HB 1524 HD2 Proposed SD2
RELATING TO AGRICULTURAL THEFT

Aloha Chair Hee, Vice Chair Shimabukuro, and Members of the Committee,

I am Janet Ashman, testifying on behalf of the Hawaii Farm Bureau Federation (HFBF). Organized since 1948, the HFBF is comprised of 1,800 farm family members statewide, and serves as Hawaii's voice of agriculture to protect, advocate and advance the social, economic and educational interests of our diverse agricultural community.

HFBF strongly supports this measure that will strengthen existing law to make sure that the certificate *already required* when transporting or selling agricultural commodities is meaningful. By including other information and validation of I.D., the document will help police trace back where and from whom the farm product originated.

Existing provisions in the law are not deterring thieves and theft from farms has become rampant throughout the islands. No farmer can guard every inch of his property every minute of the day and night. Although we are working with our local police departments and they are aware of the increase in agricultural crime and are trying to help, they don't have the staff to be everywhere at all times. This bill was introduced and supported by the county prosecutors' offices in order to help deter agricultural theft.

Thieves have become so brazen that they are now taking orders from farmers' markets and filling them by stealing fruits and vegetables right from farmers' fields the night before their promised delivery.

Although the current law requires ownership and movement certification documents for the transportation and sale of agricultural commodities over two hundred pounds or worth at least \$100, these documents are easily falsified. This bill clarifies the current requirements and requires proof of identification.

High land, labor, and shipping costs, competition from the mainland and foreign countries, and a myriad of other factors such as disease and pests make farming an especially risky venture in Hawaii. These thefts are serious and threaten farmers' entire livelihood.

Please help support our local farmers by passing out this bill. Please call Janet Ashman at (808) 848-2074 if you have any questions.