



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

ON THE FOLLOWING MEASURE:

S.B. NO. 2354, S.D. 1, RELATING TO AGRICULTURAL COMMODITIES.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

LATE TESTIMONY

DATE: Thursday, March 29, 2012

TIME: 2:00 p.m.

LOCATION: State Capitol, Room 325

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

Chair Keith-Agaran 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 16-19, 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

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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.” The problem is that the offense is referring to stolen commodities. The person who stole them cannot have “failed to maintain a certificate of ownership” as required by law. Section 145-22 requires a person, upon sale or transport of agricultural commodities, to complete a certificate that includes product, seller, and buyer information. A thief is not required to complete a certificate, and cannot complete a certificate and, therefore, cannot fail to maintain a certificate required by law.

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



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DEPARTMENT OF AGRICULTURE
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TESTIMONY OF RUSSELL KOKUBUN CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE HOUSE COMMITTEE ON JUDICIARY
MARCH 29, 2012
2:00 P.M.
CONFERENCE ROOM 325

SENATE BILL NO 2354 SENATE DRAFT 1, HOUSE DRAFT 1
RELATING TO AGRICULTURE

Chairperson Keith-Agaran and Members of the Committee:

Thank you for the opportunity to provide testimony on SB 2354 SD 1, H.D.1. 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.



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1. Section 3. Proposes “§145-25 **Enforcement; criminal penalties.** Violations of this part or any rule adopted pursuant thereto shall be criminal offenses ...”
A what “value” will the stolen agricultural commodities be appraised at (farm gate value, wholesale value, retail value, etc.) in order to determine the level or crime committed?
2. 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. In addition,
3. 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.

We respectfully defer the criminal prosecution section of the bill to the counties' prosecutor offices and law enforcement agencies.

Thank you for the opportunity to testify on this measure.

Testimony for SB2354 on 3/29/2012 2:00:00 PM

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Sent: Thursday, March 29, 2012 9:21 AM

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Testimony for JUD 3/29/2012 2:00:00 PM SB2354

Conference room: 325

Testifier position: Support

Testifier will be present: Yes

Submitted by: Ronald Weidenbach

Organization: Hawaii Aquaculture and Aquaponics Association

E-mail: hawaiiifish@gmail.com

Submitted on: 3/29/2012

Comments:

Ag theft is a major problem in Hawaii and current laws are not working to deter ag theft and the selling of stolen ag products. This bill helps address this serious problem by requiring identification and paper trail documentation.