

SB2347

SD1



State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512
Phone: (808) 973-9600 FAX: (808) 973-9613

TESTIMONY OF SCOTT E. ENRIGHT
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE SENATE COMMITTEE ON JUDICIARY AND LABOR

THURSDAY FEBRUARY 20, 2014
10:30 A.M.
CONFERENCE ROOM 16

SENATE BILL NO. 2347 SD1
RELATING TO INVASIVE SPECIES

Chairperson Hee and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill No. 2347 SD 1 relating to invasive species. This bill will, among other things, require owners or persons in charge or in possession of nursery stock to properly treat plants for the eradication of pests before the sale or transport of the nursery stock within the State or intransland.

The Hawaii Department of Agriculture (HDOA) supports the intent of certain parts of this bill, and provides amendments and comments.

Page 2 line 10 of SB2347 SD1:

(b) Nurseries, or landscapers who fail to treat their nursery stock in accordance with subsection (a) prior to transport **shall be in violation of this section.** [~~responsible for appropriate treatment at their own expense to exterminate the pest from:~~

~~(1) Nursery stock on infested properties where proof of sale or placement of their nursery stock has been made; and~~



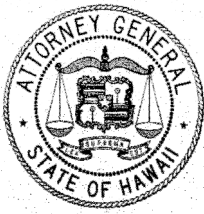
~~— (2) Any other nursery stock on the affected properties that has been infested by the transported nursery stock.~~

~~— (c) For purposes of subsection (b)(1), if proof of sale or placement is not documented,] **Persons** [persons] with knowledge of pest infestation on their property shall take and maintain appropriate pest control and extermination measures at their own expense.~~

HDOA believes this proposed amendment will address concerns that in an event of an infestation, it would be difficult for the consignor and consignee to come to terms as to the origin of the actual infestation even with a proof of sale. A clean plant could be co-mingled with infested plants while in transit. Properties may contain plants purchased from various infested and non-infested vendors.

HDOA would also point out that growers move plants within localities and from one island to another island. Currently growers may not consider themselves nurseries, because they often grow their plants in a backyard type of operation. However, growers are often seen at farmer's markets, shows, or fairs and sell or give away plants as prizes.

Thank you for the opportunity to submit testimony.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2014**

ON THE FOLLOWING MEASURE:

S.B. NO. 2347, S.D. 1, RELATING TO INVASIVE SPECIES.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Thursday, February 20, 2014 **TIME:** 10:30 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): David M. Louie, Attorney General, or
David L. Williams, Deputy Attorney General

Chair Hee and Members of the Committee:

The Department of the Attorney General has concerns as to section 3.

Section 3 of this bill amends section 150A-14(c), Hawaii Revised Statutes (HRS), to require the criminal state of mind of “gross negligence” for persons who violate either section 150A-6(3) or (4) of the HRS. Also, section 3 recommends removing “intent to propagate, sell, or release” as to prohibited animals and pests.

The first concern is on page 3, lines 11-12, where the bill proposes to insert “gross negligence” in subsection (c)(1). This may cause potential application problems in criminal cases. Gross negligence is rarely used in criminal law, if at all. It is used, however, in civil law in dealing with punitive damages. The statute as is currently written does not designate a specific state of mind as to section 150A-6(3) and (4). Section 702-204 of the HRS sets forth the required “default” states of mind when one is not specifically designated in the statute, providing in part: “When the state of mind required to establish an element of an offense is not specified by the law, that element is established if, with respect thereto, a person acts intentionally, knowingly, or recklessly.” These required states of mind already apply to section 150A-6(3) and (4).

The second concern is regarding page 3, line 22 to page 4, line 1, as well as page 4, lines 8-9, where it proposes to remove “with the intent to propagate, sell, or release” from both subsection (c)(2) and (3). There are two issues. First, the purpose of requiring the specific “intent to propagate, sell, or release” was that the specific intent is what made the offense egregious: a felony. The second issue is that, by deleting the specific intent, there will be little

difference in the conduct prohibited by paragraph (1) and paragraphs (2) and (3), except that paragraph (1) is a misdemeanor offense and paragraphs (2) and (3) are felony offenses. This result appears to undermine the very reason that paragraph (1) and paragraphs (2) and (3) were graded differently as to the level of criminality (misdemeanor as opposed to felony offenses).

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

Testimony of
WILLIAM J. AILA, JR.
Chairperson

Before the Senate Committee on
JUDICIARY AND LABOR

Thursday, February 20, 2014
10:30 AM
State Capitol, Conference Room 016

In consideration of
SENATE BILL 2347, SENATE DRAFT 1
RELATING TO INVASIVE SPECIES

Senate Bill 2347, Senate Draft 1 proposes to require owners of nursery stock to treat plants for pests prior to interisland or intransisland movement. **The Department of Land and Natural Resources (Department) supports this measure.**

Minimizing the risk of interisland or intransisland movement of invasive species in nursery stock is critical to effectively containing and controlling nursery pests in Hawaii. The measure describes in particular the coqui frog and little fire ant, but also applies to any other pest designated pursuant to Section 141-3 Hawaii Revised Statutes, which to date includes approximately 50 species and 3 genera of insects, 4 species of mites, 8 “other pests”, and 26 plant diseases. Regulation of the movement of these species in nursery stock would be beneficial to Hawaii’s environment, agriculture, and economy, and the Department supports a requirement to treat for these species on nursery and landscape properties and commodities. The Department defers to the Hawaii Department of Agriculture on specific recommendations for how these new regulations are best implemented.

The Department appreciates the opportunity to testify on this measure.

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ESTHER KIA’AINA
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
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CONSERVATION AND COASTAL LANDS
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HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS



P.O. Box 253, Kunia, Hawai'i 96759
Phone: (808) 848-2074; Fax: (808) 848-1921
e-mail info@hfbf.org; www.hfbf.org

February 20, 2014

HEARING BEFORE THE
SENATE COMMITTEE ON JUDICIARY AND LABOR

TESTIMONY ON SB 2347, SD1
RELATING TO INVASIVE SPECIES

Room 016
10:30 AM

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

I am Christopher Manfredi, President of the Hawaii Farm Bureau (HFB). Organized since 1948, the HFB is comprised of 1,832 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.

The Hawaii Farm Bureau **understands the intent of SB2347, SD1, which requires the treatment of nursery stock before transport but has concerns** about the lack of support mechanisms associated with this measure.

HFB strongly supports the control of invasive species. However, such action requires a comprehensive plan and attacking at a single point such as treatment of plants may not yield the desired results and could have an unintended consequence of hurting the industry. Invasive species such as the fire ant are currently found not only on farms but surrounding properties as well as harbors and port areas. Control of nursery stock alone will not address the problem due to numerous areas that may result in re-infestation with the farmer held responsible.

We strongly urge that this concept be incorporated in a comprehensive biosecurity measure as required by law in Hawaii's Biosecurity Plan. We urge the funding of SB 2458, and collaborate with the Department of Agriculture to implement a comprehensive strategy not only with farmers but landowners and harbors, ports, shipping companies and vendors.

We respectfully request that this measure be held and incorporated as an implementing action in SB2458, SD1.

Thank you for the opportunity to offer testimony on this important measure.

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc: misc@hawaii.edu
Subject: Submitted testimony for SB2347 on Feb 20, 2014 10:30AM
Date: Wednesday, February 19, 2014 9:04:18 AM

SB2347

Submitted on: 2/19/2014

Testimony for JDL on Feb 20, 2014 10:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Teya Penniman	Maui Invasive Species Committee	Support	No

Comments: The Maui Invasive Species Committee supports the intent of this bill but still has concerns about proposed wording under Section 3, subsection (c)(3) which could make the mere possession or unknowing transport of a pest a class C felony with a \$50,000 fine. The addition of the words "knowingly or negligently" could help prevent the unintended inclusion of persons who are already engaged in best practices to prevent the movement of pests, but may unknowingly and inadvertently transport pests. Also, the addition of a definition for "nursery stock" to HRS 150A-2 might help clarify the scope of the act. For example, little fire ants are known to move on both propagative and non-propagative plant material. If this bill becomes law, it is hoped that additional resources will be made available to the Department of Agriculture to assist the industry as so many businesses have become burdened with pest species through no fault of their own.

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Testimony of The Nature Conservancy of Hawai'i
Supporting S.B. 2347 SD1 Relating to Invasive Species
Senate Committee on Judiciary and Labor
Thursday, February 20, 2014, 10:30AM, Room 016

The Nature Conservancy of Hawai'i is a private non-profit conservation organization dedicated to the preservation of the lands and waters upon which life in these islands depends. The Conservancy has helped to protect nearly 200,000 acres of natural lands in Hawai'i. Today, we actively manage more than 35,000 acres in 11 nature preserves on Maui, Hawai'i, Moloka'i, Lāna'i, and Kaua'i. We also work closely with government agencies, private parties and communities on cooperative land and marine management projects.

The Nature Conservancy supports S.B. 2347 SD1 to help prevent the movement of coqui frogs, little fire ants and other designated pests between islands and locations within islands.

Invasive weeds, insects, diseases, snakes, and other pests are one of the greatest threats to Hawaii's economy, agriculture, natural environment, and the health and lifestyle of its people. With favorable conditions and limited competition, non-native species arrive in the Hawaiian islands to find an easy environment in which to thrive. Indeed, the colonization rate of introduced insects and mites in Hawai'i has been estimated at 500 times the rate of the continental United States.

Evidence from Hawai'i and around the world shows that preventing new pest establishment and movement between islands is exponentially more economical than eradicating a pest or, even worse, controlling it indefinitely once it becomes established.

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From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc: sgsloan808@gmail.com
Subject: Submitted testimony for SB2347 on Feb 20, 2014 10:30AM
Date: Wednesday, February 19, 2014 6:33:58 AM

SB2347

Submitted on: 2/19/2014

Testimony for JDL on Feb 20, 2014 10:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Sara Sloan	Garden Island Growers	Support	No

Comments: As a member of the Farm Bureau and Landscape Industry I have seen seen transporting pests not taken seriously for many years. The comment was always made that , " we don' want to hurt the Industry" by enacting regulations to curtail the spread of pests. Now we are encountering a pest that could destroy our industry if measures such as this are not taken to contain these pest(s) NOW. Everyone needs to be part of the solution. I strongly support this bill. .

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From: [Bobbie Becker](#)
To: [JDLTestimony](#)
Subject: Please Support SB2347
Date: Monday, February 17, 2014 8:03:24 PM

Aloha Decision Makers,

This letter is being written to ask you to please support SB2347 / HB1994.

This bill places the responsibility for ensuring that only healthy, pest free plants are sold and shipped from one island to another, on the selling nurseries. This makes total sense as the growers are the only party in a position to examine and test the plants that they are selling to other islands. The recipient nurseries (or farmers), cannot test the plants before they arrive, and in the case of invasive pests like Little Fire Ants or Coqui frogs, after arrival is too late.

I am a coffee farmer on Maui, and I would be financially unable to deal with an infestation of one of these pests. I implore you to please STOP the INVASIVES before they are shipped from one island to the other. The only way to do this is to make the grower/shipper responsible for the health (as evidenced by the lack of invasive pests) of the product before it is sold and shipped.

Thank-you for considering my input.

Bobbie Becker, owner
Maui Mountain Coffee Farm
Makawao, HI 96768
808-572-1370

From: mailinglist@capitol.hawaii.gov
To: [JDL Testimony](#)
Cc: mendezj@hawaii.edu
Subject: *Submitted testimony for SB2347 on Feb 20, 2014 10:30AM*
Date: Friday, February 14, 2014 4:20:22 PM

SB2347

Submitted on: 2/14/2014

Testimony for JDL on Feb 20, 2014 10:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc: jeannine@hawaii.rr.com
Subject: *Submitted testimony for SB2347 on Feb 20, 2014 10:30AM*
Date: Friday, February 14, 2014 8:07:47 PM

SB2347

Submitted on: 2/14/2014

Testimony for JDL on Feb 20, 2014 10:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Jeannine Johnson	Individual	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc: jonikamiya@gmail.com
Subject: Submitted testimony for SB2347 on Feb 20, 2014 10:30AM
Date: Sunday, February 16, 2014 9:37:36 PM

SB2347

Submitted on: 2/16/2014

Testimony for JDL on Feb 20, 2014 10:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Joni Kamiya	Individual	Oppose	No

Comments: This bill is very shortsighted in addressing the problem with invasive species. It is very difficult to enforce let alone trace the true sources of these pests and will ultimately penalize the farmers and ranchers. There could be other sources of invasive species that include the construction industry with the transport of vehicles and other goods as well as the tourist industry if invasive species were to be moved via vehicles or other ways of transportation. Enough bills targeting only a small group that may be contributing to the issue. Put the resources towards more useful ways of combatting it with better inspections, management and tracking of pests instead of starting the blame game.

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From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc: lavaboy458@gmail.com
Subject: Submitted testimony for SB2347 on Feb 20, 2014 10:30AM
Date: Monday, February 17, 2014 8:04:58 PM

SB2347

Submitted on: 2/17/2014

Testimony for JDL on Feb 20, 2014 10:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Gerry Ross	Individual	Support	No

Comments: This is a timely bill and although stern will help us limit the spread of little fire ant, in particular, and hopefully eradicate it before it has a chance to spread. Too often Hawaii has closed the door after the problem has landed...this is an opportunity to intervene before the invasive is established.

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From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc: mwillman@illinoisalumni.org
Subject: Submitted testimony for SB2347 on Feb 20, 2014 10:30AM
Date: Tuesday, February 18, 2014 7:26:51 AM

SB2347

Submitted on: 2/18/2014

Testimony for JDL on Feb 20, 2014 10:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Mark	Individual	Oppose	No

Comments: I oppose this bill. Please vote against this measure. It is unnecessary regulation, it will force flower farmers to go out of business and will eliminate one of the hallmark industries of the islands - flowers and nurseries. The industries in other nations (i.i. Philipines and others) will take advantage of this and will replace their cut flowers with what Hawaii is know for. Do what is good for business to make it easier not harder to be profitable. Mark Willman PO Box 25 Eleele, Kauai, HI 96705

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From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc: gordines@kauaiflowers.com
Subject: Submitted testimony for SB2347 on Feb 20, 2014 10:30AM
Date: Tuesday, February 18, 2014 1:29:35 PM

SB2347

Submitted on: 2/18/2014

Testimony for JDL on Feb 20, 2014 10:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
John R. Gordines	Individual	Oppose	No

Comments: I Oppose this Bill; It adds Food costs to Hawaii residents who can least afford it. We are Food Insecure enough!!! 1 in 7 people receive food stamp assistance in Hawaii and this Bill will add to that number unnecessarily. Please DO NOT HEAR this Bill, it is bad for Hawaii and adds to our cost of living. Mahalo

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From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc: rcstewart@luv-it.com
Subject: Submitted testimony for SB2347 on Feb 20, 2014 10:30AM
Date: Tuesday, February 18, 2014 4:17:50 PM

SB2347

Submitted on: 2/18/2014

Testimony for JDL on Feb 20, 2014 10:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Richard Marshall Stewart	Individual	Support	Yes

Comments: Although a step in the right direction; "gross negligence" seems almost as difficult to prove as "intent". The operative language should be worded to allow actual enforcement if any control or solution is to be found for this rapidly growing statewide problem that threatens all lands land possibly life as we know it in Hawaii.

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From: [Wiederoder, Peter \(PG\)](#)
To: [JDLTestimony](#)
Subject: testimony for SB 2347
Date: Wednesday, February 19, 2014 9:56:31 AM

TRANSPORTING INVASIVES: Nurseries or landscapers who move plants infested with little fire ants or coqui frogs, both pernicious invasive species, would face the prospect of paying for extermination costs if those pests infest other properties under a bill (SB2347) up for consideration Thursday.

This bill seeks to hold Nurseries on the neighbor islands responsible for pests that travel inter-island and then penalize that nursery if they get caught. SB2347 (HB1994) at minimum takes one farmer against another and tears the fabric of one island against another. It's a vehicle to place blame on farmers and ranchers on neighbor islands. This bill at its worst will penalize and put farmers and ranchers out of business. PLEASE DO NOT pass this bill.

Thank You,

Peter Wiederoder
Kalaheo, Kauai