

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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**Testimony of
WILLIAM J. AILA, JR.
Chairperson**

**Before the House Committee on
AGRICULTURE**

**Thursday, March 13, 2014
9:30 AM
State Capitol, Conference Room 312**

**In consideration of
SENATE BILL 2347, SENATE DRAFT 2
RELATING TO INVASIVE SPECIES**

Senate Bill 2347, Senate Draft 2 proposes to require owners of nursery stock to treat plants for pests prior to intrastate movement. This draft also proposes to establish a comprehensive intrastate quarantine program, including the regulation of movement of certain articles from quarantine areas established by the Hawaii Department of Agriculture (HDOA). **The Department of Land and Natural Resources (Department) supports the intent of this measure to strengthen Hawaii's intrastate biosecurity. The Department defers to HDOA on the most practical way to implement and enforce these regulations, and whether these programs can be achieved with current staff capacity.**

Minimizing the risk of interisland or intrainland 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 HDOA 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

JESSE SOUKI
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS



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

ON THE FOLLOWING MEASURE:

S.B. NO. 2347, S.D. 2, RELATING TO INVASIVE SPECIES.

BEFORE THE:

HOUSE COMMITTEE ON AGRICULTURE

DATE: Thursday, March 13, 2014

TIME: 9:30 a.m.

LOCATION: State Capitol, Room 312

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

Chair Wooley and Members of the Committee:

The Department of the Attorney General (Department) 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. Section 3 also eliminates the intentional state of mind requirements for section 150A-14(c)(2) and (3), as well as the required specific "intent to propagate, sell, or release" prohibited animals, restricted plants, animals, or microorganisms, or pests.

The first concern is on page 3, lines 17-18, where the bill proposes to insert "gross negligence" in section 150A-14(c)(1) for violations of section 150A-6(3) and (4), HRS. 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. Currently, section 150A-14(c)(1) does not designate a specific state of mind for violations of section 150A-6(3) and (4). Section 702-204, 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 "default" states of mind currently apply to violations of section 150A-6(3) and (4). This bill proposes to change the state of mind requirement to "gross negligence." If a lesser state of mind requirement is warranted, the Department recommends using the term "negligently," as

defined in the Penal Code at section 702-206, HRS, rather than the confusing term, "gross negligence".

The second concern is regarding page 4, lines 5-7, where the bill eliminates the intentional state of mind requirement for section 150A-14(c)(2), as well as the required specific "intent to propagate, sell, or release" prohibited animals, restricted plants, animals, or microorganisms, or pests. Under the current law, the specific "intent to propagate, sell, or release" is **the** basis for elevating the offense from a misdemeanor under section 150A-14(c)(1), to a class C felony under section 150A-14(c)(2). That specific intent makes the offense more serious. By deleting this specific intent requirement from the class C felony offense, there will be no difference in the conduct prohibited by paragraph (1) and paragraph (2). The same offense will be both a misdemeanor and a felony, which effectively deletes the class C felony offense.

It should be noted that by deleting "intentionally transports" from page 4, line 5, and "intentionally imports" from page 4, line 12, the bill is eliminating the intentional state of mind requirements from section 150A-14(c)(2) and (3), thereby triggering the application of the "default" states of mind under section 702-204, HRS.

It should also be noted that by deleting "with the intent to propagate, sell, or release" from section 150A-14(c)(3), on page 4, lines 14-15, the bill is eliminating this specific intent requirement, which was intended to make the offense more serious and elevate it to a felony offense. With this amendment, a person could recklessly transfer a pest, without any intent to propagate, sell, or release it, and still be guilty of a class C felony offense.



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March 13, 2014

HEARING BEFORE THE
HOUSE COMMITTEE ON AGRICULTURE

**TESTIMONY ON SB 2347, SD2
RELATING TO INVASIVE SPECIES**

Room 312
9:30 AM

Chair Wooley, Vice Chair Onishi, 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, SD2, 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. No demographic is more concerned about the spread of invasive species than farmers and ranchers. However, meaningful action requires a comprehensive plan. Addressing a single point such as treatment of plants may not yield the desired results and will likely carry unintended consequences impacting those affected industries. 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. We are suggesting a more holistic approach.

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

We respectfully request that this measure be replaced with language found in HB1932HD1.

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



Testimony of the Maui Invasive Species Committee
Before the Committee on Agriculture
SB 2347 SD2- Relating to Invasive Species
Conference Room 312
March 13, 2014, 9:30AM

The Maui Invasive Species Committee (MISC) supports the intent of S.D. 2347 SD 2 but has concerns about proposed wording under Section 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.

Clarifying by statute that the Hawaii Department of Agriculture has the explicit authority to inspect non-propagative plant parts and other materials identified by the Department as being high risk for the inter-island movement of pest species might also be beneficial.

Because implementation of a more rigorous inter-island biosecurity system will take time, perhaps years, Hawaii's counties would benefit from legislative assurances that they are allowed to enact their own procedures to protect their islands from the continued movement of certain pest species. Because the counties may already have authority to enact legislation by ordinance to address this issue, language clarifying that this legislation is not intended to remove any such authority might be desirable. Proposed language would read:

~~Unless and until the department implements these provisions, including adoption of any necessary rules,~~ **Notwithstanding and not in lieu of any existing authority**, any county may establish its own requirements by ordinance to prevent the introduction of infested, regulated articles, [rest of text as currently drafted].

Respectfully submitted,

Teya M. Penniman
Manager, Maui Invasive Species Committee

AIRLINES COMMITTEE OF HAWAII



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March 13, 2014

Honorable Jessica Wooley, Chair
Honorable Richard Onishi, Vice Chair
House Committee on Agriculture

Re: SB 2347 SD2 – RELATING TO INVASIVE SPECIES - CONCERNS
Conference Room 312 – 9:30 AM

Aloha Chair Wooley, Vice Chair Onishi and Members of the Committee:

The Airlines Committee of Hawaii* (ACH), which is made up of 21 signatory air carriers that underwrite the State Airport System appreciates the opportunity to offer testimony on SB 2347 SD2.

The ACH strongly supports the prevention and control of invasive species, and supports the intent of SB 2347 SD2. We have concerns with section 3 of the measure, as it amends the penalty section which applies to someone who transports the subject material to a significantly reduced mens rea standard from needing “intent” to violate, to acting with “gross negligence”.

Thank you for the opportunity to submit testimony.

Sincerely,

Blaine Miyasato
ACH Co-chair

Matthew Shelby
ACH Co-chair

**ACH members are Air Canada, Air New Zealand, Air Pacific, Alaska Airlines, All Nippon Airways, Aloha Air Cargo, American Airlines, China Airlines, Delta Air Lines, Federal Express, go!, Hawaiian Airlines, Island Air, Japan Airlines, Korean Air, Philippine Airlines, Qantas Airways, United Airlines, United Parcel Service, US Airways, and Westjet.*



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HOUSE COMMITTEE ON AGRICULTURE

**THE HONORABLE JESSICA WOOLEY, CHAIR
THE HONORABLE RICHARD H.K. ONISHI, VICE CHAIR**

**SENATE BILL NO. 2347, SENATE DRAFT NO. 1
March 13, 2014, 9:30 a.m., Conference Room 312**

Testimony in Strong Support with Suggested Amendment

**By Roy Catalani, Vice President of Strategic Planning and Government Affairs
Young Brothers, Limited**

Chair Wooley, Vice Chair Onishi, and Members of the House Committee on Agriculture:

Young Brothers, Limited (*Young Brothers*) strongly supports Senate Bill No. 2347, Senate Draft No. 1 (*SB2347 SD1*). We respectfully suggest an amendment to the proposed penalty provision, as explained below.

SB2347 SD1 proposes to strengthen the State’s efforts to curb the spread of coqui frogs, little fire ants, and other invasive species in Hawai`i. The bill adds two new statutory provisions to the current Hawai`i Revised Statutes Chapter 150A, Plant and Non-domestic Animal Quarantine and Microorganism Import and also amends that chapter’s section 150A-14 with respect to violations relating to the importation, possession, or transportation of certain animals, plants, or equipment that are harmful to agriculture, horticulture, animals, public health, or natural resources. The two new provisions would (1) require nursery stock that is infested with certain pests to be treated for the eradication of pests before the sale or transport of the nursery stock from one island to another island within the State or intra-island and (2) establishes an affirmative responsibility on the consignor of shipments containing any landscape material or products, agricultural goods, construction materials, equipment, vehicles, soil, or sand to prevent the movement of invasive species in Hawaii.

Young Brothers continues to partner with agencies, such as the Hawai`i State Department of Agriculture and Department of Health, to combat the spread of invasive species among the islands of our State. Recently, we notified our customers that all Hāpu`u (Hawaiian tree fern) be accompanied by a Hawai`i State Department of Agriculture (*HDOA*) certification of inspection. Young Brothers will not accept Hāpu`u (whether live or otherwise, including all Hāpu`u plants, logs and Hāpu`u to be used as a planting medium) for interisland shipment unless it is accompanied by an HDOA certificate of inspection. As Hawai`i’s prime mover of intra-state cargo, the company also encourages its employees to be especially watchful for unwanted hitchhikers, such as coqui frogs, on cargo shipped interisland. On the few occasions that coqui frogs have been detected in shipments from the Big Island, we have taken immediate action to isolate and contain the infected cargo for disposition of the invasive creature by the HDOA.

While our employees maintain their vigilance for invasive species, they rely on required certifications and permits to avoid interruptions in the interisland flow of cargo. And they will continue to be instructed to do so should SB2347 SD1 be enacted. However, as currently written, the proposed penalty provision in the bill's section 6 poses some questions:

§150A- Penalties. Any person who moves infested regulated articles intrastate shall be subject to a fine equal to the value of the shipment or \$10,000, whichever is greater.

Young Brothers does not believe it could be construed as “any person who moves infested regulated articles intrastate.” However, if adopted as it currently reads, the penalty provision might be construed to apply to a carrier such as Young Brothers that inadvertently moves “infested regulated articles intrastate” even if the offending shipment is accompanied by a certificate of inspection or a limited permit pursuant to the proposed statute. Accordingly, Young Brothers respectfully suggests the following revision to the proposed penalty provision:

§150A- Penalties. Any person who moves infested regulated articles intrastate shall be subject to a fine equal to the value of the shipment or \$10,000, whichever is greater; provided that a person transporting any infested regulated article that is accompanied by a certificate of inspection or limited permit pursuant to this chapter, or to any other applicable law, shall not be subject to a fine under this section.

By this clarifying language, a carrier such as Young Brothers could rely on certified inspections or permits issued in accordance with Hawai'i or federal law. If this suggestion is acceptable, representatives of the company would be very willing to work with the Committee and its staff in fashioning an appropriate revision to SB2347 SD1.

Thank you for this opportunity to testify.



Hawaii Floriculture and Nursery Association

Testimony for the Twenty Seventh Legislature, 2014
State of Hawaii

COMMITTEE ON AGRICULTURE

March 13, 2014
9:30 am
Room 312
State Capitol
415 South Beretania Street

A bill for an act
SB 2347, SD2 RELATING TO INVASIVE SPECIES
Oppose SB 2347

My name is Eric S. Tanouye and I am the President for the Hawaii Floriculture and Nursery Association. HFNA is a statewide umbrella organization with approximately 300 members. Our membership is made up with breeders, hybridizers, propagators, growers, shippers, wholesalers, retailers, educators, and the allied industry, which supports our efforts in agriculture.

We **Strongly Oppose** SB2347 Relating to Invasive Species. This measure comes across as Draconian, unreasonable and punitive and may not only devastate the economy of Hawaii County, but devastate the livelihood of more than two thousand farming families and those who are employed by them.

The language of this bill is confusing and we fear this confusion could lessen the ability of those who are in the business of regulating to regulate. For example:

Part I: regulates nursery stock

Part II: regulates all regulated articles, which can include anything that can harbor a pest as designated under 141-3. There are 90 pests designated by the Department, which include among other things, mealybugs, aphids, ants, thrips, mites, beetles, etc. There are over 2000 types of mealybugs, 4000 types of aphids, 12,000 types of ants, 5,000 types of thrips, and over 30,000 types of mites. There are over 10,000 types of native insects.

Regulated articles include not only the pests themselves, but also includes “any other article that may pose a risk of spreading a pest. Accordingly, that would mean any nurserystock, tree, herb, vine, cut-flower, cutting, graft, scion, bud, seed, leaf, root, or rhizome; any nut, fruit, vegetable; any grain, cereal, or legume, in the natural or raw state;



Hawaii Floriculture and Nursery Association

any moss, hay, straw, dry-grass, or other forage; any unmanufactured log, limb, or timber, or any other plant growth or plant product unprocessed or in the raw state and any sand, soil, or earth; any live bird, reptile, insect, or other animal, in any stage of development”

There are currently only 10 plant quarantine inspectors on the island of Hawaii that are currently assigned to inspect and certify. We do not believe it is possible for ten inspectors to enforce this measure, nor do we believe it is possible for the department to do the rulemaking, compliance agreements, limited permits, etc that is mandated by this bill. As a result, counties may adopt and enforce county ordinances. If counties do adopt county ordinances, it will be difficult to find the expertise to inspect and certify pursuant to this measure. While invasive species committees can control a weed, thinking that they can differentiate between thousands of insect pest species is ludicrous. We have been told that the inspectors must have a science degree with classes in entomology, pathology, and zoology and it still takes the inspector trainee two more years to be fully independent.

Crop	No. of Farms			Acreage			Value of		
	Hawaii County	State	%	Hawaii County	State	%	Hawaii County	State	%
					(1000 acres)			(1000	
								dollars)	
Vegetables	210	540	38%	.8	2.1	38%	10,076	21,896	46%
Fruits	880	1500	59%	3.0	4.1	73%	18,944	23,680	80%
Coffee	790	830	95%	3.8	7.8	49%	21,730	29,580	73%
Flowers	465	1025	45%				41,238	94,662	44%

We understand that this is a CGAPS and HISC initiative, and attempts to focus on an important problem but we have reservations regarding this bill.

However, if the consensus is to pass this measure, then more plant quarantine inspectors are required to inspect and certify pursuant to this measure and \$10,000,000 should be provided to the County to suppress the pests and allow the building of quarantine treatments so that commerce between the Hawaii County and the rest of the State would not be interrupted.



Hawaii Floriculture and Nursery Association

We **OPPOSE** this bill and ask you to consider other measures that can better help all of Hawaii's Agriculture. If you have any questions at this time, I would be happy to discuss them and can be reached by phone at 808-959-3535 ext 22, cell 960-1433 and email eric@greenpointnursery.com.

Supporting Agriculture and Hawaii,

Eric S. Tanouye
President

Hawaii Floriculture and Nursery Association