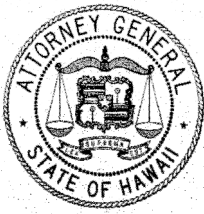


SB2347

Testimony

Requires nursery stock 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 intraisland. Limits the exception to possess, propagate, sell, transfer, or harbor prohibited animals to those being used for scientific research. Eliminates the element of intent from the penalty for owning, possessing, harboring, transferring, and importing prohibited animals and pests.



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

ON THE FOLLOWING MEASURE:

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

BEFORE THE:

SENATE COMMITTEES ON ENERGY AND ENVIRONMENT
AND ON AGRICULTURE

DATE: Thursday, February 06, 2014 **TIME:** 3:30 p.m.

LOCATION: State Capitol, Room 225

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

Chairs Gabbard and Nishihara and Members of the Committees:

The Department of the Attorney General has concerns as to section 4.

Section 4 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 4 recommends removing “intent to propagate, sell, or release” as to prohibited animals and pests.

The first concern is on page 3, lines 18-19, 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 4, lines 6-20, 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).

From: mailinglist@capitol.hawaii.gov
To: [AGL Testimony](#)
Cc: misc@hawaii.edu
Subject: Submitted testimony for SB2347 on Feb 6, 2014 15:30PM
Date: Wednesday, February 05, 2014 1:32:49 PM

SB2347

Submitted on: 2/5/2014

Testimony for AGL/ENE on Feb 6, 2014 15:30PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Teya Penniman	Maui Invasive Species Committee	Support	Yes

Comments: The Maui Invasive Species Committee supports the intent of this bill but has concerns about some of its provisions. Under Section 2, one provision would require nurseries or landscapers to "eradicate nursery stock from all infested properties where proof of sale or placement has been made." The text should clarify that the designated pests are to be eradicated, not the nursery stock. Also, a definition for proof of sale or placement might be helpful. Finally, it might be preferable to use the same standard of "gross negligence" for subparagraphs (2) and (3) under Section 4, as it seems possible that an individual or business might unknowingly transport or import a prohibited animal or microorganism or pest despite following best management practices. Thank you for your consideration. Teya M. Penniman

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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From: mailinglist@capitol.hawaii.gov
To: [AGL Testimony](#)
Cc: page@princessradhafarm.com
Subject: Submitted testimony for SB2347 on Feb 6, 2014 15:30PM
Date: Thursday, January 30, 2014 10:13:20 AM

SB2347

Submitted on: 1/30/2014

Testimony for AGL/ENE on Feb 6, 2014 15:30PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Page Trygstad	Individual	Comments Only	No

Comments: Require the ag dept, pest and disease control, inspection services, to do their job and this problem would go away. I was told by the head of this division that if the shipment has "papers" that they do not inspect!!! That is why we have CBB!!!

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From: mailinglist@capitol.hawaii.gov
To: [AGL Testimony](#)
Cc: mendezj@hawaii.edu
Subject: *Submitted testimony for SB2347 on Feb 6, 2014 15:30PM*
Date: Friday, January 31, 2014 7:57:48 AM

SB2347

Submitted on: 1/31/2014

Testimony for AGL/ENE on Feb 6, 2014 15:30PM in Conference Room 225

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: [AGL Testimony](#)
Cc: lynhowe1946@yahoo.com
Subject: *Submitted testimony for SB2347 on Feb 6, 2014 15:30PM*
Date: Wednesday, January 29, 2014 7:22:44 PM

SB2347

Submitted on: 1/29/2014

Testimony for AGL/ENE on Feb 6, 2014 15:30PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Lyn Howe	Individual	Support	No

Comments:

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From: [ENETestimony](#)
To: [AGL Testimony](#)
Subject: FW: Please SUPPORT SB 2347
Date: Tuesday, February 04, 2014 7:09:04 PM

From: Punahale Travel [mailto:vtravel@hawaiiintel.net]
Sent: Tuesday, February 04, 2014 3:00 PM
To: ENETestimony
Subject: Please SUPPORT SB 2347

Aloha Senator Gabbard!

I am writing you to ask for your support in passing SB 2347. I know that many people believe that there is no hope for the Big Island in regards to the coqui frog infestation. However, I am living proof that eradication is possible if we all do our part. I have been voluntarily eradicating the coqui for 3 years now in the Kona Palisades, Kona Coastview, Wonderview and Kona Highlands subdivisions and am PROUD to say that we have successfully eradicated the coqui frog from several properties. The reason that passing this bill is so important is that there are property owners out there that are unwilling to cooperate with the neighborhood volunteer programs and obey the law. Unfortunately, those unwilling residents are causing unsafe conditions amongst their neighbors. I have been on properties where neighbors are fighting over who brought the coqui in, I have been in areas where neighbors are no longer speaking to one another because of the problem. I have been in areas where families are forced to take heavy narcotics to sleep, forcing them to close their homes up at night and sleep with air conditioners on. I have been on properties with coqui infestation so bad that the mosquito populations are tremendous. This troubles me with the thought of dengue fever outbreaks. It has been proven that properties with coqui infestation has a higher population of mosquitos than those without. We need every one of us in Hawaii to share the responsibility of eradicating the coqui frog.

Unfortunately, as the current bill is written, it has not been able to be reinforced by law, allowing the coqui problem to continue to grow. This law will allow residents to take back their neighborhoods by finally having someone behind them to reinforce the importance of the eradication process. We need your help!

With warm aloha,

Victoria Kibler

From: [JIM CAUFIELD](#)
To: [nishihara1 - Amanda](#)
Subject: Subject: SB 2347 is badly needed for our communities
Date: Wednesday, February 05, 2014 12:47:06 PM

To: Senator Nishihara
2/5/2004

In Kona on the Big Island, our Kona Heavens housing association and the Kohanaiki Property owners in the area have developed an eradication program to keep our community from being overrun by the Coqui. In the last few years we have successfully treated 19 locations, at an estimated cost in excess of \$5000, only to see more frogs reintroduced by unsuspecting homeowners. These Frogs are mainly introduced through untreated infested nursery stock purchased by the owner, his landscaper or yard person.

SB 2347 is a common sense bill, long overdue, in eliminating this hazard. Please do your utmost in seeing that it becomes law. Thanking you for your support in this matter.

Regards,
Jim Caufield
Coqui Frog Coordinator
Kona Heavens and Kohanaiki Areas
Phone (808) 325 3299
Email Thikajnc@yahoo.com