

**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2022**

ON THE FOLLOWING MEASURE:

H.B. NO. 2194, RELATING TO GOLF COURSES AND DRIVING RANGES.

BEFORE THE:

HOUSE COMMITTEE ON WATER AND LAND

DATE: Tuesday, February 8, 2022 **TIME:** 9:00 a.m.

LOCATION: State Capitol, Room 430, Via Videoconference

TESTIFIER(S): Holly T. Shikada, Attorney General, or
Caron Inagaki, Deputy Attorney General

Chair Tarnas and Members of the Committee:

The Department of the Attorney General (Department) opposes this bill.

The bill makes any owner or operator of a golf course or driving range strictly liable for any property damage to surrounding residential properties by golf balls hit by golf course or driving range patrons unless the owners and operators can show that they took reasonable steps, such as installing and maintaining netting to prevent golf balls from leaving the golf course or driving range.

The title of this bill is "RELATING TO GOLF COURSES AND DRIVING RANGES." This bill may be subject to constitutional challenge because the title expresses two subjects, "golf courses" and "driving ranges." Section 14 of article III of the Constitution of the State of Hawai'i provides that "[e]ach law shall embrace but one subject, which shall be expressed in its title."

The Department also believes that the bill is overly broad, unnecessary, and runs counter to the general principles of tort law. In order to impose liability, tort law generally requires that there be some type of wrongdoing. Strict liability imposes liability without requiring proof of any negligence or fault because it is based on the breach of an absolute duty. The activities for which one may be held strictly liable fall into three categories: (1) possession of dangerous animals; (2) products liability for defective products; and (3) abnormally dangerous activities. All these categories involve a degree of responsibility that can justify the imposition of strict liability. However, simply owning or operating a golf course or driving range does not fall into any of these

categories and should not trigger an absolute duty, particularly when owners and operators of golf courses and driving ranges cannot reasonably control all the activities or behaviors of third party patrons. In addition, property owners can be said to have assumed the risk of damage from errant golf balls when purchasing property adjacent to golf courses and driving ranges.

Moreover, the bill does not appear to be necessary. The bill provides that golf course and driving range owners and operators may escape strict liability by proving that they took reasonable steps to prevent golf balls from leaving the course or range. However, in existing tort law, the golf course or driving range owner-operator already has the duty to take reasonable precautions to prevent injury or damage arising from the operation of the golf course or driving range. If the owner-operator failed in that duty, an adjacent property owner currently has the ability to make a claim or file suit against the owner-operator.

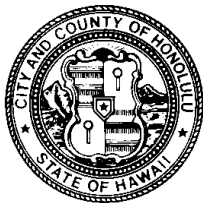
Finally, in existing tort law, the person claiming damage or injury has the burden of proof to prove liability and causation. Imposing strict liability unless owners and operators can prove they acted reasonably reverses that burden of proof and potentially relieves the property owner of any comparative fault for voluntarily choosing to live next to a golf course or driving range.

We respectfully request that this bill be held.

DEPARTMENT OF ENTERPRISE SERVICES
GOLF COURSE DIVISION * HONOLULU ZOO * NEAL S. BLAISDELL CENTER * WAIKIKI SHELL
CITY AND COUNTY OF HONOLULU

777 WARD AVENUE · HONOLULU, HAWAII 96814-2166
PHONE: (808) 768-5400 * FAX: (808) 768-5433 * INTERNET: www.honolulu.gov/des

RICK BLANGIARDI
MAYOR



JERRY PUPILLO
DIRECTOR

TRACY S. KUBOTA
DEPUTY DIRECTOR

**TESTIMONY OF JERRY PUPILLO
DIRECTOR, DEPARTMENT OF ENTERPRISE SERVICES**

Re: HB 2194

**HOUSE COMMITTEE ON WATER & LAND
Tuesday, February 8, 2022, 9:00 am
State Capitol, Conference Room 430 via Videoconference**

Chair Tarnas, Vice Chair Branco, and members of the committee, the Department of Enterprise Services (DES), City and County of Honolulu, would like to offer testimony in opposition to HB 2194.

HB 2194 is intended to “hold owners and operators of golf course or driving ranges strictly liable for any property damage to surrounding residential properties by golf balls hit by golf course or driving range patrons while participating in activities on the golf course or driving range unless the owners and operators can show that they took reasonable steps, such as the installation and maintenance of netting no less than ___ feet in height, to prevent golf balls from leaving the golf course or driving range.”

DES Golf Division operates six municipal golf courses throughout the City and County of Honolulu. Individuals golfers are held liable for their actions on our courses, as users of public parks are. Signs are posted at our courses and notices are written on all scorecards reminding golfers that errant golf balls are the responsibility of the golfer, golfers are responsible for any injuries and/or damages caused by errant golf shots, and that the City and County of Honolulu will not be liable for injury or damages incurred as a result of players’ actions.

Owners and operators of golf courses should not be held responsible for individual golfers’ negligence or intentional acts. Putting the onus of golf course owners and operators to determine what may be considered “reasonable” under the law to prevent errant golf balls from leaving the property, including the installation of netting, is unduly burdensome. Additionally, installation of netting may not be feasible under current zoning and land use ordinances (i.e. pole height restrictions) and is cost prohibitive. Imposing such requirements may necessitate the closure of municipal golf courses, either temporarily or permanently.

Finally, DES notes that imposing such liability sets dangerous precedent for other venues, such as public parks. Many recreational sports that are played in public parks involve errant balls, such as soccer and baseball. To make venue owners and operators responsible for individuals’ actions is unduly burdensome and unreasonable and may result in the closure of such recreational facilities, to the detriment of the public.

The Department of Enterprise Services opposes this bill and respectfully requests its deferral.

Thank you for the opportunity to testify on HB 2194.

HB-2194

Submitted on: 2/4/2022 7:27:17 PM

Testimony for WAL on 2/8/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Jasmine Porter	Individual	Support	No

Comments:

MY FAMILY HAS BEEN ON MY PROPERTY SINCE THE 1950S, BEFORE THE EXISTENCE OF THE GOLF COURSE. EVER SINCE THE GOLF COURSES EXISTENCE, WE HAVE ALWAYS HAD GOLF BALLS ENTER OUR YARD. HOWEVER IN THE MORE RECENT YEARS, MORE AND MORE BALLS HAVE ENTERED OUR YARD. MY HOUSE HAS BEEN HIT AND RECENTLY ONE OF MY VEHICLES. I AM AFRAID THAT A BALL WILL SOON BREAK/DAMAGE THE SOLAR PANELS ONY RROF AND I WILL BE LEFT WITH THE DAMAGE BILL. HOMEOWNERS SHOULD NOT BE LIABLE FOR THE DAMAGE CAUSED BY AN ACTIVITY THAT THE GOLF COURSE IS MANAGING AMD PROFITTING FROM. THIS SHOULD BE A LIABILTY AND RESPONSIBILITY OF THE ORGANIZATION IN CHARGE OF THE ACTIVITY. I. AFRAID FOR MY 88 YEAR OLD GRANDMOTHER ALONG WITH MY 3 AND 7 YEAR OLD CHILDREN TO PLAY OUTSIDE IN FEAR OF GETTING HIT BY A BALL WHICH CAN BE LETHAL. EXPECTING THE GOLFER TO BE LIABLE WITH NO CAMERAS TO DETERMINE WHO ACTUALLY HIT THE BALL AND RELYING ON THE HOMEOWNER TO REPORT THE INCIDENT AT THE TIME IT OCCURS TO HOPE STAFF CAN IDENTIFY WHO HIT THE BALL IS RIDICULOUS. I HOPE IT DOESNT REQUIRE A LIFE TO BE TAKEN BEFORE THE SERIOUSNESS OF THIS ISSUE IS TAKEN I TO CONSIDERATION.

HB-2194

Submitted on: 2/7/2022 10:21:51 PM

Testimony for WAL on 2/8/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
David Harada	Individual	Support	No

Comments:

My name is David Harada and I have been living at 45-256 Kulauli Street from 2004. In all the years that I have lived golf balls have hit my house, landed in my yard and damaged jalousies glass. Never has it been this bad. Since Kerry Lau has taken over ownership of Bayview Golf Course it has been non stop. They have been through 3 General Managers and 2 of the 3, Eric Onodera and Richard Josue have not done much to curb balls being hit over the protective netting. The 3rd GM didn't stay long enough. Numerous times I have called and texted and it was always they same answer, " I don't see anyone, it takes a special person to hit it over, we are checking", On some occasions 5-8 balls come over and hit my house, land in the yard, goes across the street, damages screens and almost hit my family numerous times and nothing is done,

They finally select a concessionaire to run the driving range and install Top tracer which tracks the ball. This made it worse. Kellan Anderson is the owner of this company. I have written, texted them and myself or wife for document when balls enter my property and when they land in the tree area behind my house. From January 2021 thru Decmeber 2021 I have collected 117 balls. Not including the ones that bounce back into the tree area or the ones that we cannot find. Just for January 2022 I have collected 9 balls and have 2 for February. On May 15, 2021 at 2030 ball came over and bounced in the yard and hit my son in the back. I called Kellan and all he could say was oh im sorry. Im just glad it bounced first otherwise it would have hit him in the head. He gives me the same answers. We have to see the person hit the ball, oh I made an announcement, we are checking, I don't see anyone, nobody is here, we are closed. Balls are being hit way after closing and nothing is done. One night the lights were on and a ball hit my house and the lights turn off. I texted Kellan and he tells me, " we just closed right after that. Everyone is leaving so I'm not sure who it was. We are closed now. Sorry." This is Dec 23, 2021 @ 2224. This is what all the neighbors behind the driving range have to live with day in and day out. My family can't enjoy are own yard for fear of getting hit. I have installed temporary netting so balls don't hit my back door, which has happened 3 times and dented my lockset and twice after my daughter just went outside and walked 10 feet away.

Technology has gotten so advanced that anyone can hit it over. Raising the netting might not help and they don't care about our safety. These concerns have been brought up to the owners, Kellan, GM and Jeneen Hoopai Director of Operations. Signs are put up to tell patrons not to use drivers off the top tier, but they rent drivers and let customers hit off the top tier. They don't monitor, they don't stop anyone from using drivers from the top and bottom. Anything that can drive a ball over 250 yards might help, but like I said technology is dangerous. More needs to be

done. They always are going to use the excuse that they are not liable. These houses were built before the driving range est. 1963. Today the driving range should be rotated so it impacts only the golf course. If things are left as is without the owners being liable for their patrons then we are out of luck. They let it happens knowing they have to catch the people. 2-3 years of the new owners and they will do nothing. Previous owners banned drivers and woods, kicked unruly customers out, made them give us information when things were damaged. They made it livable. I have anxiety every night that a ball will break my jalousie windows and hurt someone in my family. With the long and late hours I stay up until all the lights are off and then go to sleep. S-Th closes at 2200 and F-S closes at 2300. Customers still hit balls sometimes til 1 hour after. Even after they turn off the lights.

I beg and plead for you to see my concerns for our neighbors.