

**LINDA LINGLE**  
Governor



**SANDRA LEE KUNIMOTO**  
Chairperson, Board of Agriculture

**DUANE K. OKAMOTO**  
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**TESTIMONY OF SANDRA LEE KUNIMOTO  
CHAIRPERSON, BOARD OF AGRICULTURE**

**BEFORE THE HOUSE COMMITTEE ON JUDICIARY  
Tuesday, January 26, 2010  
2:30 P.M.**

**HOUSE BILL NO. 1684, H.D. 1  
RELATING TO INVASIVE SPECIES**

Chairperson Karamatsu and Members of the Committee:

Thank you for the opportunity to testify on House Bill No. 1684, H.D. 1. The purpose of this bill is to prevent and reduce the intentional introduction and spread of invasive species by establishing and revising penalties appropriate to the harm caused by the intentional introduction and spread of invasive species to the economy, natural environment, and the health and lifestyle of Hawaii's people. The department strongly supports this bill and would like to take this opportunity to provide additional comments for your consideration.

Act 101, Session Laws of Hawaii 2008, which took effect on July 1, 2009, decriminalized the penalty for violations of section 150A-5, Hawaii Revised Statutes, pertaining to the department of agriculture's plant and animal declaration form for declaring entry of certain articles into the State. Act 101 was intended to free up prosecutorial and judicial resources from resolving minor criminal offenses without undermining the affected state agencies' ability to enforce these violations. However, relatively few cases were prosecuted under section 150A-5, HRS, and their effect on judicial system resources was minimal. By contrast, department resources for administrative enforcement of these violations are extremely limited and overstretched due to staff reductions and budgetary constraints. In light of the department's mission

to prevent the introduction of invasive species and control their spread, and in order to deter violations of Section 150A-5, HRS, the department believes that its mission will be better served if section 150A-5 violations are reinstated as criminal offenses. To that end, we offer proposed revisions to this bill.

Under Section 2 of this bill, which amends penalty section 150A-14, Hawaii Revised Statutes, subsection (a) no longer needs to be addressed because the amendments to it pursuant to Act 101, Session Laws of Hawaii 2008, already took effect on July 1, 2009. As for subsection (b), pertaining to section 150A-5 violations, the department supports the concept that these violations should be considered minor criminal offenses and supports reclassifying them as petty misdemeanors, and would like to offer proposed revisions on page 3, lines 1 thru 8, to read as follows:

“(b) Any person, including a transportation company, ~~[who]~~ that violates section 150A-5 shall be guilty of a petty misdemeanor and fined not less than ~~[\$100 and not more than \$10,000]~~ \$50. The provisions of section 706-640 notwithstanding, the maximum fine shall be \$5,000. For a second ~~[violation]~~ offense committed within five years of a prior ~~[violation]~~ offense, the transportation company or person may be fined not less than ~~[\$500]~~ \$250 and not more than ~~[\$25,000.]~~ \$15,000.”

As for the bill's addition of a new violation and penalty provision under section 150A-14(c)(3) to address the intentional import, possession, harboring, transfer or transport, including through inter-island or intra-island movement, with the intent to propagate, sell, or release any pest designated by statute or rule, unless otherwise allowed by law, the department agrees that strict penalties should be provided to deter such violations, as they present a serious risk to Hawaii's agriculture, natural resources, environment and its people. However, the department believes that, to be consistent with section 150A-14(c)(2), the fine amount should be the same for a class C felony under both proposed section 150A-14(c)(3) and section 150A-14(c)(2) ; therefore page 4, line 11 and 12, should read as follows:

“and subject to a fine of not less than \$50,000, but not more than \$200,000.”

The department further supports the proposed revisions to subsection (g) as found on pages 4 and 5 of this bill, with the inclusion of “a pest designated by statute or rule” under the “intent to propagate”, and does not offer any addition revisions to this subsection.

As for Section 3 of this bill, the department recommends the deletion of this particular section because Act 101, Session Laws of Hawaii 2008, has already taken effect on July 1, 2009, and this bill should reflect the current language of Section 150A-14, Hawaii Revised Statutes.

For your consideration please see the attached revisions as proposed by the department for your review. Once again the department would like to thank you for this opportunity to testify in strong support of House Bill No. 1684, H.D. 1.

# H.B. NO.

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## A BILL FOR AN ACT

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RELATING TO AGRICULTURE.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1       SECTION 1. The legislature finds that the unchecked spread  
2 of invasive species is one of the greatest threats to Hawaii's  
3 economy, natural environment, and the health and lifestyle of  
4 Hawaii's people. Invasive pests can cause millions of dollars  
5 in crop losses, the extinction of native species, the  
6 destruction of native forests, the spread of disease, and the  
7 quarantine of exported agricultural crops.

8       Despite our ongoing efforts to detect and eradicate  
9 invasive species, our fragile island ecosystems are constantly  
10 at risk from insects, disease-bearing organisms, weeds, and  
11 other invasive pests. The coqui frog, giant salvinia, miconia,  
12 ohia rust, nettle caterpillar, and little fire ant are all  
13 present in Hawaii, disrupting the delicate balance of our  
14 ecosystems, crowding out native species, and reducing the  
15 biodiversity of our islands. Other harmful species like the  
16 papaya mealybug, erythrina gall wasp, Asian citrus psyllid, and  
17 the varroa mite have the potential to devastate Hawaii's

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1 environment and agriculture if allowed to become widespread and  
2 remain unchecked by natural predators.

3       The legislature further finds that decriminalization of the  
4 penalty for violations of section 150A-5, Hawaii Revised  
5 Statutes, pertaining to the department of agriculture's plant  
6 and animal declaration form for declaring entry of certain  
7 articles into the State as well as certain pre-entry  
8 requirements for such articles, that took effect on July 1,  
9 2009, as provided in Section 2 of Act 101, Session Laws of  
10 Hawaii 2008, does not fulfill the purpose of Act 101 to free up  
11 prosecutorial and judicial resources from resolving minor  
12 criminal offenses without undermining the department's ability  
13 to enforce these violations. Cases prosecuted for violations of  
14 section 150A-5, Hawaii Revised Statutes, are very few and,  
15 consequently, their effect on judicial system resources is  
16 minimal. By contrast, decriminalization of these violations  
17 requires the department of agriculture to establish an  
18 administrative enforcement process which will consume  
19 substantial staff resources at a time when those resources are  
20 very limited and overstretched due to budgetary constraints. In  
21 view of the department's critical mission to prevent the  
22 introduction of invasive species and control their spread, and

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1 to deter commission of section 150A-5 offenses, the legislature  
2 believes the department's mission is better served if section  
3 150A-5 violations are reinstated as criminal offenses. Because  
4 section 150A-5 violations are minor criminal offenses, the  
5 legislature finds that it is appropriate to change the penalty  
6 for these violations from a misdemeanor to a petty misdemeanor.

7 The purposes of this Act are: (1) to prevent and reduce  
8 the intentional introduction and spread of invasive species by  
9 establishing severe penalties appropriate to the harm the  
10 intentional introduction and spread of pests causes to the  
11 economy, natural environment, and the health and lifestyle of  
12 Hawaii's people; and (2) to reinstate the criminal penalty for  
13 violations of section 150A-5, Hawaii Revised Statutes, and to  
14 change the penalty for section 150A-5 violations from a  
15 violation to a petty misdemeanor offense.

16 SECTION 2. Section 150A-14, Hawaii Revised Statutes, is  
17 amended to read as follows:

18 **"§150A-14 Penalty.** (a) Any person who violates any  
19 provision of this chapter other than sections 150A-5, 150A-6(3),  
20 and 150A-6(4) or who violates any rule adopted under this  
21 chapter other than those rules involving an animal that is

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1 prohibited or a plant, animal, or microorganism that is  
2 restricted, without a permit, shall be guilty of a misdemeanor  
3 and fined not less than \$100. The provisions of section 706-640  
4 notwithstanding, the maximum fine shall be \$10,000. For a  
5 second offense committed within five years of a prior offense,  
6 the person or organization shall be fined not less than \$500 and  
7 not more than \$25,000.

8 (b) Any person, including a transportation company, ~~[who]~~  
9 that violates section 150A-5 shall be guilty of a petty  
10 misdemeanor and fined not less than ~~[\$100 and not more than~~  
11 ~~\$10,000.]~~ \$50. The provisions of section 706-640  
12 notwithstanding, the maximum fine shall be \$5,000. For a second  
13 ~~[violation]~~ offense committed within five years of a prior  
14 ~~[violation]~~ offense, the transportation company or person may be  
15 fined not less than ~~[\$500]~~ \$250 and not more than ~~[\$25,000]~~  
16 \$15,000.

17 (c) Notwithstanding section 706-640:

18 (1) Any person or organization that violates section 150A-  
19 6(3) or 150A-6(4), or owns or intentionally  
20 transports, possesses, harbors, transfers, or causes  
21 the importation of any snake or other prohibited  
22 animal seized under section 150A-7(b), or whose

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1 violation involves an animal that is prohibited or a  
2 plant, animal, or microorganism that is restricted,  
3 without a permit, shall be guilty of a misdemeanor and  
4 subject to a fine of not less than \$5,000, but not  
5 more than \$20,000; [~~and~~]

6 (2) Any person or organization who intentionally  
7 transports, harbors, or imports with the intent to  
8 propagate, sell, or release any animal that is  
9 prohibited or any plant, animal, or microorganism that  
10 is restricted, without a permit, shall be guilty of a  
11 class C felony and subject to a fine of not less than  
12 \$50,000, but not more than \$200,000[-]; and

13 (3) Any person or organization who intentionally imports,  
14 possesses, harbors, transfers, or transports,  
15 including interisland or intransland movement, with  
16 the intent to propagate, sell or release, any pest  
17 designated by statute or rule, unless otherwise  
18 allowed by law, shall be guilty of a class C felony  
19 and subject to a fine of not less than \$50,000, but  
20 not more than \$200,000.

21 (d) Whenever a court sentences a person or organization  
22 pursuant to subsection (a) or (c) for an offense which has



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1 resulted in the escape or establishment of any pest and caused  
2 the department to initiate a program to capture, control, or  
3 eradicate that pest, the court shall also require that the  
4 person or organization pay to the state general fund an amount  
5 of money to be determined in the discretion of the court upon  
6 advice of the department, based upon the cost of the development  
7 and implementation of the program.

8 (e) The department may, at its discretion, refuse entry,  
9 confiscate, or destroy any prohibited articles or restricted  
10 articles that are brought into the State without a permit issued  
11 by the department, or order the return of any plant, fruit,  
12 vegetable, or any other article infested with pests to its place  
13 of origin or otherwise dispose of it or such part thereof as may  
14 be necessary to comply with this chapter. Any expense or loss  
15 in connection therewith shall be borne by the owner or the  
16 owner's agent.

17 (f) Any person or organization that voluntarily surrenders  
18 any prohibited animal or any restricted plant, animal, or  
19 microorganism without a permit issued by the department, prior  
20 to the initiation of any seizure action by the department, shall  
21 be exempt from the penalties of this section.

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1 (g) For purposes of this section "intent to propagate"  
2 shall be presumed when the person or organization in question is  
3 found to possess, transport, harbor, or import:

4 (1) Any two or more animal specimens of the opposite sex  
5 that are prohibited or restricted, without a permit,  
6 or are a pest designated by statute or rule;

7 (2) Any three or more animal specimens of either sex that  
8 are prohibited or restricted, without a permit, or are  
9 a pest designated by statute or rule;

10 (3) Any plant or microorganism having the inherent  
11 capability to reproduce and that is restricted,  
12 without a permit; or

13 (4) Any specimen that is in the process of reproduction.

14 SECTION 3. Statutory material to be repealed is bracketed  
15 and stricken. New statutory material is underscored.

16 SECTION 4. This Act shall take effect upon its approval.

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18 INTRODUCED BY: \_\_\_\_\_

19 BY REQUEST



OFFICE OF HAWAIIAN AFFAIRS

Legislative Testimony

**HB 1684, HD 1 RELATING TO INVASIVE SPECIES**

House Committee on Judiciary

January 26, 2010

2:30 p.m.

Room: 325

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The Office of Hawaiian Affairs (OHA) **SUPPORTS** SB1684, HD 1, which prevents and reduces the intentional introduction and spread of invasive species by establishing more severe penalties, up to the felony level.

OHA points out that Hawai'i surpasses even the Galapagos Islands in the number and variety of species that evolved from a small set of colonizing ancestors, and we possess the world's highest degree of endemism, including 90% for our terrestrial species. For more than 70 million years in Hawai'i, the evolution of new species has greatly exceeded losses of species due to extinction. Yet, within just a few generations, we have begun to lose hundreds of endemic plant species; undoubtedly thousands of lesser known taxa such as insects, spiders and snail species; and half the bird species in this state.

Today, with less than 0.2% of the land area of the United States, the Hawaiian Islands support more than 30% of the nation's species listed under the endangered Species Act. In fact, Hawai'i is well known as the extinction capital of the United States. Further, it is estimated that now up to 30% of all established species in Hawai'i are nonnative.

Hawai'i is obviously unique. The natural environment is more than just something to enjoy and marvel at; it is part of Native Hawaiian culture, and Native Hawaiians are genealogically linked to it.

This legislature has called invasive species the single greatest threat to our state. Giving teeth to the laws that we use to protect our state will enhance your past legislative efforts, and in this time of economic hardship, this measure is a practical way to achieve much needed progress in this area.

This bill also parallels presidential Executive Order 13112, Invasive Species (February 3, 1999), which requires federal agencies to use their authorities to prevent the introduction of invasive species, to detect invasive species, and to eradicate and control such species in a cost-effective and environmentally sound manner.

Therefore, OHA urges the Committee to PASS HB 1684, HD 1. Thank you for the opportunity to testify.

Testimony of The Nature Conservancy of Hawai'i  
Supporting H.B. 1684 HD1 Relating to Invasive Species  
House Committee on Judiciary  
Tuesday, January 26, 2010, 2:30pm, Rm. 325

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*The Nature Conservancy of Hawai'i is a private non-profit conservation organization dedicated to the preservation of Hawaii's native plants, animals, and ecosystems. The Conservancy has helped to protect nearly 200,000 acres of natural lands for native species in Hawai'i. Today, we actively manage more than 32,000 acres in 11 nature preserves on O'ahu, 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.*

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The Nature Conservancy of Hawai'i supports H.B. 1684 HD1 Relating to Invasive Species.

Invasive insects, diseases, snakes, weeds, and other pests are one of the greatest threats to Hawaii's economy, natural environment, and the health and lifestyle of its people.

The Hawai'i Department of Agriculture (HDOA) is responsible for the inspection of domestic cargo and passengers arriving at Hawaii's ports to protect the state from the introduction of unwanted plant and animal pests and diseases. The HDOA also inspects interisland shipments to prevent movement of pests between islands. Pest risk assessments conducted by the Department at ports of entry across the state have helped the Department identify high-risk pathways for pest introductions and prioritize the allocation of departmental resources. The Department has also developed a multi-faceted Biosecurity Plan to enhance its efforts with more inspectors, more efficient and effective inspection services, joint state-federal inspection facilities, and agreements with importers and producers for improved sanitary protocols before items are shipped to Hawai'i. The financial and personnel support provided by the Legislature has been essential to implementing this plan.

Providing the HDOA with authority to assess significant fines and penalties for the intentional introduction of invasive species provides the appropriate and necessary disincentive for such actions and helps to achieve the goal of enhanced prevention and control of invasive species.

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*For the Protection of Hawaii's Native Wildlife*  
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January 25, 2010

**House Committee on Judiciary**  
**Rep. Jon Riki Karamatsu, Chair & Rep. Ken Ito, Vice Chair**

**Hearing: Tuesday, January 26, 2010; 2:30 P.M., Conference Rm. 325**

**Re: HB 1684, HD1**

**Testimony in Support**

Chair Karamatsu, Vice Chair Ito, and members of the committee. The Hawai'i Audubon Society was founded in 1939, and it is Hawai'i oldest conservation organization. The primary mission of the Society is to foster community values that result in the protection and restoration of native ecosystems and conservation of natural resources through education, science and advocacy. The Society strongly supports measures that protect our ecosystems from invasive species. Once established, invasive animals and plants crowd out endemic (native) native species. The sad fact is that Hawai'i has the highest number of listed threatened and endangered species in the nation. There are 394 threatened and endangered species in the State of Hawai'i, of which 294 are plants. Invasive plants have led to the extinction of 55 species of plants in the State with another 42 possibly extinct. This extinction, along with the introduction of non-endemic animals has lead to the extinction 24 bird species and is endangering another 32.

Without a doubt invasive species are one of the greatest threats to Hawai'i's natural environment, economy, and the lifestyle and health of Hawai'i's people. The key to controlling invasive species is prevention. Enhancing the penalties for intentionally transporting and introducing a prohibited animal or plant species into our state will be a strong disincentive and will discourage individuals from doing so. It will also help enhance current prevention and control efforts.

We urge the committee to pass HB1684 HD1.

We appreciate the opportunity to offer testify here today.

Sincerely,

George Massengale, JD  
Legislative Analyst