

JAN 28 2009

A BILL FOR AN ACT

RELATING TO HAWAII MADE PRODUCTS.

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

1 SECTION 1. Section 486-119, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "~~[+] §486-119 [+~~ Hawaii-made products. No person shall
4 keep, offer, display or expose for sale, or use as an
5 advertising or media tool, or solicit for the sale of any item,
6 product, souvenir, or any other merchandise which is labeled
7 "made in Hawaii" or which by any other means misrepresents the
8 origin of the item as being from any place within the State,
9 which has not been manufactured, assembled, fabricated, or
10 produced within the State and which has not had at least [~~fifty-~~
11 ~~one]~~ sixty-five per cent of its wholesale value added by
12 manufacture, assembly, fabrication, or production within the
13 State."

14 SECTION 2. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16



1 SECTION 3. This Act shall take effect upon its approval.

2

INTRODUCED BY:

[Signature]

4. Ali Egh
Ude Gattand

Jim
[Signature]

S.S.T.Z.
Norman Sakamp
Alvin Richman
Michelle N. Kidani
Anna Mercedes K.
[Signature]
[Signature]
Caro Fukunaga
[Signature]
Josh K.
David Y. Dye
Will Eyre
Randy H. Park



Report Title:

Hawaii Made Products

Description:

Increases the percentage required for wholesale value added manufacture, assembly, fabrication, or production within the State which is labeled "made in Hawaii."



LINDA LINGLE
Governor



SANDRA LEE KUNIMOTO
Chairperson, Board of Agriculture

DUANE K. OKAMOTO
Deputy to the Chairperson

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

**TESTIMONY OF SANDRA LEE KUNIMOTO
CHAIRPERSON, BOARD OF AGRICULTURE**

**BEFORE THE SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION
WEDNESDAY, FEBRUARY 25, 2009
8:30 AM**

**SENATE BILL NO. 1223
RELATING TO HAWAII MADE PRODUCTS**

Chairperson Baker and Members of the Committee:

Thank you for this opportunity to provide testimony on Senate Bill No. 1223, relating to Hawaii made products. This bill amends Chapter 486-119, Hawaii Revised Statutes by adding language that is more restrictive to labeling requirements for products labeled “made in Hawaii”. The department recognizes and supports the intent of this bill, but cannot support the bill in its current form.

The bill does not define what “Wholesale value added” is or a method to determine what the wholesale value is of a product manufactured, assembled, or otherwise produced in the state of Hawaii. The bill also does not address who will bear the cost of auditing those businesses that make claims of selling items “made in Hawaii” which may or may not achieve the 65 percent wholesale value added in the state. The Measurement Standards Branch does not have the expertise to audit a business making “made in Hawaii” claims.



HAWAII FOOD INDUSTRY ASSOCIATION

820 Mililani St., Suite 810, Honolulu, Hawaii 96813
Phone (808) 533-1292 - Fax (808) 599-2606 - Email LISHawaii@aol.com
Direct (808) 479-7966



February 25, 2009

To: Senate Committee on Commerce & Consumer Protection
Senator Rosalyn H. Baker, Chair
Senator David Y. Ige, Vice Chair

By: Richard C. Botti, President
Lauren Zirbel, Government Relations

Re: SB 1223 RELATING TO HAWAII MADE PRODUCTS

Expressing concerns

Chairs & Committee Members:

As the producer of the Made In Hawaii Festival, maintaining the credibility of the event depends on our policing of products to provide every assurance possible that vendors meet the requirements of "Made In Hawaii" laws. The law is more gray than black and white, requiring us to use some discretion, which we believe is good after struggling with this for over fourteen years. When we are in doubt, we will punt to the State Department of Agriculture asking the vendor to bring the product to the State, and if they will agree that it meets the legal requirements, we will allow them to participate.

We question what good the 51% to 65% change would accomplish. It could cause some firms to move their manufacturing out of state where they do not have to comply with any of our laws. They can produce more product at lower costs, and reduce shipping costs.

The attached formula is something we worked on for three years, and then, thanks to the Department of Agriculture we were able to finalize the form that we feel comfortable with. The form in itself is arbitrary. We have to do the policing ourselves, with discretion.

We will comply with whatever policy you decide on. The current law however is logical in that it requires both a majority of the value added to be 51% plus the product must be manufactured, assembled, fabricated, or produced within the State. The firm must be located here, and there must be evidence that product enhancement took place here. In the vast majority of cases, we can immediately tell if fowl play is involved. We have vendors sign agreements that they will comply with the laws, and we have still kicked products out of the event. When there is money involved, some vendors will try to sneak some items in.

MADE IN HAWAII FESTIVAL

MADE IN HAWAII LAW — Defined

10/08

The following definitions of Made In Hawaii are the basis for assuring the credibility of the Made In Hawaii Festival. HFIA produces the Festival to help support locally produced items. Because the law is vague, it is our responsibility to provide some guidelines and ground rules for participation in the Festival. We do this with the intent to be as fair as possible, while maintaining credibility. While placing a price on creativity is not an easy thing, it is important to include this element in our definitions, especially when it comes to the value of products where creativity is a major component. This would especially apply to books and paintings.

[\$486-119] Hawaii-made products. No person shall keep, offer, display or expose for sale, or solicit for the sale of any item, product, souvenir, or any other merchandise which is labeled "made in Hawaii" or which by any other means misrepresents the origin of the item as being from any place within the State, which has not been manufactured, assembled, fabricated, or produced within the State and which has not had at least fifty-one per cent of its wholesale value added by manufacture, assembly, fabrication, or production within the State

[\$486-118] Misbranding. (a) No person shall deliver for introduction, hold for introduction or introduce into the State; or keep, offer, or expose for sale; or sell any consumer commodity which is misrepresented or misbranded in any manner.

(b) The board, pursuant to section 486-7 and chapter 91, shall adopt rules relating to misbranding. The rules may:

- (1) Require any person involved in the manufacture, processing, production, assembly, fabrication, or importation of a specified consumer commodity to keep and make available for inspection or copying by the administrator adequate records to substantiate the source of the consumer commodity, or in the case of blends, the source of such constituents, as may be required by the board;
- (2) Establish fanciful names or terms, and in the case of blends, minimum constituent content by weight, to be used in labeling to differentiate a specific consumer commodity from an imitation or look-alike; and
- (3) Establish requirements to reconcile the respective volumes of specific consumer commodities received versus the total amounts output, either as whole or processed product or as blends.

In addition, the board may adopt other rules as it deems necessary for the correct and informative labeling of consumer commodities.

FORMULA TO ESTABLISH MADE IN HAWAII

The following formula will provide HFIA with documentation necessary to assure you meet the legal requirements with respect to the Festival.

There are three components of product cost:

- 1) Direct Material Cost—raw materials, distinguished by origin, imported or Hawaiian;
- 2) Direct Labor Cost—the costs of workers who add value to a product through their direct involvement in the production process here in Hawaii; and
- 3) Manufacturing Overhead Cost—indirect manufacturing costs incurred in Hawaii, which includes:
 - Indirect labor cost*—wages of employees not directly involved in product, including:
 - Wages for employees performing equipment maintenance and repairs;
 - Wages for production supervisors; and
 - Wages for personnel supporting production such as quality control inspectors.

Indirect Materials cost:

- Utilities consumed by manufacturing equipment;
- Insurance for manufacturing assets;
- Supplies consumed during the production process
- Depreciation on manufacturing assets; and
- Safety equipment for manufacturing equipment operators.

Not considered as a product cost according to Generally Accepted Accounting Practices (GAAP) are:

- Operating expenses— Resources consumed by administrative and selling activities, including compensation of officers, business advertising, and waste disposal; and
- Lease, rent, taxes, or interest on business property, assets, or debts.

EXAMPLE FORMULA

Cost—per individual unit		
Material Cost—Imported.....	A	\$ 10.00
<hr/>		
Hawaii Value added		
Material Cost—Hawaii (Locally Produced Materials).....	B	\$ 3.00
Direct Labor Cost—Hawaii	C	\$ 2.00
Manufacturing Cost—Hawaii		
Indirect Material Cost.....	D	\$.20
Indirect Labor Cost ..	E	\$.12
Creativity Value if applicable.....	F	\$ 5.10
Hawaii Value = (B+C+D+E+F) \$3.00 + \$2.00 + \$0.20 + \$0.12 + \$5.10)	G	\$ 10.42
Product Cost (Wholesale value) (A+G) (\$10.00 + \$10.42	H	\$ 20.42

Hawaii Wholesale Value added (H-A ÷ H= I) (\$20.42 - \$10.00 = \$10.42 ÷ \$20.42) = I 51.0284%
--

CREATIVITY VALUE FORMULA

If your items involve creativity, you may be asked to justify this amount if it appears not to be objective. Creativity should be based on an individual product, based on one product run. An example would be a 5,000 book run. Included in the creativity is the time it took to finalize the creation based on the cost of other items created over time. Also, include overhead costs involved, such as office and incidental expense over the time span that it took to create the idea, volume, or product.

While we will accept anything that appears reasonable, we do expect it to be objective. It is our intention to encourage and support Made In Hawaii products, where the creativity is from residents of Hawaii.

If you have problems with the formula, please provide us with the figures, and we will help you finalize the formula.

(F) Creativity value per individual product [book, lithograph, greeting card, etc.] = time required to create, value of idea, overhead required during creation, and the value of other productions that have increased the value of your creations based on demand.

You may establish this based on percentage of the value of each individual item or product, and add this amount to (F) above, so long as the creativity is created in Hawaii as a resident of Hawaii.

- (U) Time required to create the product (1,200 hours X hourly fee of \$ 20.00) = ...\$24,000
(Estimated hours required to create product)
- (V) Value of idea based on past demand of past successful creations.....\$10,000
(Profits from sales of last creation)
- (W) Overhead while creating the product that is not otherwise included in formula...\$ 1,720
(40 weeks @ \$43per week for supplies & utilities)
- (X) Total.....\$35,720

(Y) Total production of products printed, manufactured, or produced.....7,000

(Z) = (X) \$35,720 ÷ (Y) 7000 = Z \$5.10 per individual product. This amount is to be placed in line (F) above.

MADE IN HAWAII FESTIVAL FORMULA WORKSHEET

Note: Please submit this information to the Made In Hawaii Festival upon request. This information will remain confidential and not shared with anyone except the State of Hawaii Department of Agriculture upon request if needed for investigatory purposes.

Cost—per individual unit

(A) Material Cost—Imported.....A \$ _____

Hawaii Value added

(B) Material Cost—Hawaii (Locally Produced Materials)B \$ _____

(C) Direct Labor Cost—HawaiiC \$ _____

Manufacturing Cost—Hawaii

(D) Indirect Material Cost..... D \$ _____

(E) Indirect Labor CostE \$ _____

(F) Creativity Value if applicable..... F \$ _____

(G) Hawaii Value = (B+C+D+E+F)G \$ _____

(H) Product Cost (Wholesale value) (A+G).....H \$ _____

(I) Hawaii Wholesale Value added (H - A ÷ H= I) (\$ _____ - \$ _____ = \$ _____ ÷ \$ _____) = _____ %

CREATIVITY VALUE FORMULA

(F) Creativity value per individual product [book, lithograph, greeting card, etc.] = time required to create, value of idea, overhead required during creation, and the value of other productions that have increased the value of your creations based on demand.

You may establish this based on percentage of the value of each individual item or product, and add this amount to (F) above, so long as the creativity is created in Hawaii as a resident of Hawaii.

(U) Time required to create the product (_____ hours X hourly fee of \$ _____) = ..\$ _____
(*Estimated hours required to create product*)

(V) Value of idea based on past demand of past successful creations.....\$ _____
(*Profits from sales of last creation*)

(W) Overhead while creating the product that is not otherwise included in formula...\$ _____

(X) Total.....\$ _____

(Y) Total production of products printed, manufactured, or produced..... _____

(Z) = (X) \$ _____ ÷ (Y) _____ = (Z) \$ _____ per individual product. Place amount of (Z) in box (F) above

Company Name _____

Address _____ City _____ Zip _____

Contact Person _____ Telephone _____

I have reviewed this document and confirm that it is correct to the best of my knowledge.

Signature _____ Date _____ Fax _____

Email _____

Submit to: **Made In Hawaii Festival**
Hawaii Food Industry Assn.
P.O. Box 2810
Honolulu, HI 96803

You may Email to: madeinhawaiifest@aol.com

Senator Rosalyn Baker, Chair
Senator David Ige, Vice Chair
Committee on Commerce & Consumer Protection



HEARING Wednesday, February 25, 2009
 8:30 am
 Conference Room 229
 State Capitol, Honolulu, Hawaii 96813

RE: SB1223, Relating to Hawaii Made Products

Chair Baker, Vice Chair Ige, and Members of the Committee:

Retail Merchants of Hawaii (RMH) is a not-for-profit trade organization representing 200 members and over 2,000 storefronts, and is committed to support the retail industry and business in general in Hawaii.

RMH has serious concerns about the ramifications of SB1223, which increases the percentage required for wholesale value added manufacture, assembly, fabrication or production within the State which is labeled "made in Hawaii" from 51% to 65%.

SB12223 could have fundamental, far-reaching and unintended consequences for Hawaii manufacturers of food products, most of which are vendors for our retail members. These companies have operated successful home-grown small businesses under the existing provisions in §486-119, HRS, for many years.

Changing the rules would definitely impact the parameters under which these companies have operated:

- **Recipes:** The reality is that a large proportion of the raw ingredients in Hawaii products are imported; these are just not produced here. However, it is the addition of that Hawaii-grown juice or special flavor that makes the product unique.
- **Marketing:** Manufacturers have spent tremendous resources on trademarks, labels, branding and marketing. SB1223 will have serious, costly and disastrous effects on these companies.

Last year, RMH cooperated with DBEDT to produce a retail-specific satisfaction survey of the Japanese market. One area of interest was the kind of products our Japanese visitors purchased on their vacations – at the very top of that list was Hawaii products!

Hawaii's retailers want to support local manufacturers; our customers want to support local businesses. The cost of doing business in Hawaii already is huge, and national and international competition for our Hawaii-based companies is fierce. This measure surely will force our companies out of the marketplace.

We urge you to hold SB1223. Thank you for your consideration and for the opportunity to comment on this measure.

Carol Pregill, President

CPNtestimony@capitol.hawaii.gov

SB 1223

SB 1223 Amends "made in Hawaii" Labeling Requirements

OPPOSED to SB 1223

Chair Rosalyn Baker

Senate Commerce and Consumer Protection Committee

Hearing Date: Wednesday February 25, 2009 at 8:30 am

Place: Senate Conference Room 229

Chair Baker and committee members my name is Jim Wayman, President of the Hawaii Coffee Association. Thank you for allowing me to testify in **OPPOSITION to SB 1223**.

SB 1223 Changes the requirement for the value of the product imparted in Hawaii to use of the term "Made in Hawaii" from 51% to 65%. Although we support the intent of the bill we believe vague wording in this bill may have serious unintended consequences by overriding current coffee "Truth in Labeling" legislation (486-120.6) by inclusion of the phrase "...or which by any other means misrepresents the origin of the item as being from any place within the state...". Current "Coffee Truth in Labeling (486-120.6) already deals with the percentage of "origin" coffees required in the blend in order to use coffee point of origin names.

In 1992 the coffee industry in Hawaii sponsored "Truth in Labeling" legislation that passed and protects consumers by requiring coffee companies to place the percentage of Hawaiian coffee used in the bag immediately next to the Hawaiian coffee origin name i.e. 10% Kona Blend. The % number has to be the same size type as the coffee name and at least 3/16 of an inch high. The industry believes that an informed consumer is a protected consumer.

SB 1223 may also place a hardship on small companies currently qualifying at the 51% level for "Made in Hawaii" status who now will have to find a way to qualify at 65%. Even if they could do so it would potentially raise the price of their goods at a time when they are already struggling for survival during this economic downturn in tourism.

CPNtestimony@capitol.hawaii.gov

SB 1223

SB 1223 Amends "made in Hawaii" Labeling Requirements

OPPOSED to SB 1223

Chair Rosalyn Baker

Senate Commerce and Consumer Protection Committee

Hearing Date: Wednesday February 25, 2009 at 8:30 am

Place: Senate Conference Room 229

My name is Jim Lenhart and I am the Vice President of Hawaii Coffee Company. I am in **OPPOSITION to SB 1223.**

SB 1223 Changes the requirement for the value of the product imparted in Hawaii to use of the term "Made in Hawaii" from 51% to 65%. Although we support the intent of the bill we believe vague wording in this bill may have serious unintended consequences by overriding current coffee "Truth in Labeling" legislation (486-120.6) by inclusion of the phrase "...or which by any other means misrepresents the origin of the item as being from any place within the state...". Current "Coffee Truth in Labeling (486-120.6) already deals with the percentage of "origin" coffees required in the blend in order to use coffee point of origin names.

In 1992 the coffee industry in Hawaii sponsored "Truth in Labeling" legislation that passed and protects consumers by requiring coffee companies to place the percentage of Hawaiian coffee used in the bag immediately next to the Hawaiian coffee origin name i.e. 10% Kona Blend. The % number has to be the same size type as the coffee name and at least 3/16 of an inch high. The industry believes that an informed consumer is a protected consumer.

SB 1223 may also place a hardship on small companies currently qualifying at the 51% level for "Made in Hawaii" status who now will have to find a way to qualify at 65%. Even if they could do so it would potentially raise the price of their goods at a time when they are already struggling for survival during this economic downturn in tourism.

Thank you,

Jim Lenhart
VP Sales & Service
Hawaii Coffee Company
1555 Kalani Street
Honolulu, Hawaii 96817

To: COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Rosalyn H. Baker, Chair
Senator David Y. Ige, Vice Chair

Date: Saturday, February 25; 8:30 AM

Location: Conference Room 229

Subject: TESTIMONY IN STRONG SUPPORT OF SB 1223

Submitted by: Alexander Alika Jamile, President, Moanalua Gardens Foundation

Aloha Chair Baker, Vice Chair Ige and committee members. My name is Alexander Alika Jamile, Executive Director and President of Moanalua Gardens Foundation (MGF). I submit my testimony in **strong** support of SB 1223, Relating to Hawai'i Made Products.

For 31 years, Moanalua Gardens Foundation (MGF) has presented the annual Prince Lot Hula Festival, the state's largest non-competitive hula festival, at one of the state's most important cultural sites, Moanalua Gardens.

Held the third Saturday in July, the festival is one of O'ahu's premier cultural events attracting upwards of 8,000 visitors and residents to a spectacular outdoor setting where hula hālau perform on an authentic pa hula (hula mound).

One of the biggest attractions of the festival is our Made In Hawai'i craft fair. We only allow vendors who have authentic merchandise made in our islands to sell at the festival. We wholeheartedly support this bill to increase the product percentage of Hawaii-made merchandise.

Additionally, this bill will keep Native Hawaiian businesses competitive and tourism dollars circulating locally thereby maximizing economic benefits exponentially.

We urge your support of SB 1223.

Mahalo nui loa,

Alexander Alika Jamile
Executive Director and President, Moanalua Gardens Foundation

Hawaiian Host, Inc.
500 Alakawa Street
Honolulu, Hawaii 96817
Ph: (808) 842-7300 Fax: (808) 848-0055

Testimony on
S.B. 1223 Relating to Hawaii Made Products
Senate Committee on Commerce and Consumer Protection
Wednesday, February 25, 2009
8:30 a.m.
Conference Room 229

Chair Baker and committee members, my name is Dennis Teranishi, CEO of Hawaiian Host Chocolates. Thank you for the opportunity to submit testimony in opposition to S.B. 1223.

S.B. 1223 is of concern because it causes confusion as to the definition of "made in Hawaii". There are existing laws and regulations that adequately address labeling requirements. We already have too many laws and regulations to deal with in Hawaii, and adding even more adds to our costs in this highly competitive global market.

Also, since almost 100% of Hawaiian macadamias are grown on the island of Hawaii, we are concerned that a windstorm or hurricane could severely damage orchards like the way it did on Kauai over 20 years ago. That hurricane caused the closure of a new macadamia farm that was being started by A&B. To replace a damaged orchard will take a minimum of eight years since it takes eight years before a macadamia tree starts to produce adequate volumes of nuts. In the meantime, we will need to find foreign sources to make up for any shortage caused by a major storm. Even if we were able to find foreign kernel, we would not be able to use it since it would be in violation of S.B. 1223, and all of our employees would lose their employment since we would be forced to close our business. Furthermore, there would be no opportunity for the local macadamia farming industry to recover since there would be no processors to buy their nuts.

We are the largest producer of chocolate covered macadamias and we sell them in 21 countries. We are a private, locally owned company with headquarters in Hawaii. We buy macadamia nuts from over 200 farmers, most of who farm 5-20 acres, on the Big Island of Hawaii, and husk/crack the nuts at processing facilities in Kona and Hilo. We also buy kernels from other processors in Hawaii. We just doubled our macadamia drying capacity at our Kona processing facility, to allow us to purchase even more from local farmers to meet our growing demand in international markets like China.

The information above is presented to show you that we support our local macadamia growers, many who have been supplying us for over 30 years, and we are expanding our processing capacity to buy even more local grown products.

All of these efforts, however, can be ruined by a major storm or hurricane, which may drastically reduce or totally wipeout Hawaii production, forcing us to look for foreign sources of macadamias until our growers recover. S.B. 1223 will not allow us to import foreign macadamias and use t he Hawaiian Host brand.

We urge you to hold this bill.

Thank you for the opportunity to offer this testimony.

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 24, 2009 1:59 AM
To: CPN Testimony
Cc: jenasteinbauer@hotmail.com
Subject: Testimony for SB1223 on 2/25/2009 8:30:00 AM

Testimony for CPN 2/25/2009 8:30:00 AM SB1223

Conference room: 229
Testifier position: support
Testifier will be present: No
Submitted by: Jena Steinbauer
Organization: Individual
Address:
Phone:
E-mail: jenasteinbauer@hotmail.com
Submitted on: 2/24/2009

Comments:

Aloha. I would like to support this bill to increase the percentage required for products that are labeled "Made in Hawaii" to 65%. I believe it is imperative that we uphold to the validity of products produced in Hawaii. By raising the standards to 65%, we can be assured that products stating "Made in Hawaii" are truly produced in Hawaii. Mahalo.