

SB 2585

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

LATE

TESTIMONY OF SANDRA LEE KUNIMOTO
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE SENATE COMMITTEE ON AGRICULTURE AND HAWAIIAN AFFAIRS

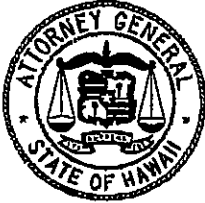
TUESDAY, FEBRUARY 12, 2008
2:45 P.M.

SENATE BILL NO. 2585
RELATING TO HONEY

Chairpersons Tokuda, and Members of the Committee:

Thank you for this opportunity to provide testimony on Senate Bill No. 2585 relating to honey. The Department of Agriculture believes that country of origin labeling (COOL) is important for both our producers and consumers, but prefers that it is handled at the federal level rather than having the state implement its own law.

National COOL legislation has already been passed and implemented for wild and farm raised shellfish. Implementation for other commodities covered under this Act is supposed to start on September 30, 2008.



**TESTIMONY OF THE STATE ATTORNEY GENERAL
TWENTY-FOURTH LEGISLATURE, 2008**

ON THE FOLLOWING MEASURE:

S.B. NO. 2585, RELATING TO HONEY.

BEFORE THE:

SENATE COMMITTEE ON AGRICULTURE AND HAWAIIAN AFFAIRS

DATE: Tuesday, February 12, 2008 **TIME:** 2:45 PM

LOCATION: State Capitol, Room 224
Deliver to: BY FAX, Senate Sergeant-At-Arms Office, 586-6659

TESTIFIER(S): Mark J. Bennett, Attorney General
or Margaret S. Ahn, Deputy Attorney General

Chair Tokuda and Members of the Committee:

The Department of the Attorney General opposes this measure because it raises serious constitutional concerns under the United States Constitution's Commerce Clause.

This bill imposes a country of origin labeling requirement for foreign honey and bee pollen. Proposed section 148-B(b) mandates that any package of honey and bee pollen, including any package containing foreign honey blended with domestic honey, produced in any country other than the United States and offered for retail sale in Hawaii, be labeled with the country of origin. It further mandates that such labeling be done prior to delivery into Hawaii. Proposed section 148-B(c) also requires that if any foreign honey is unlabeled and the retail vendor cannot determine its country of origin, the honey shall be removed from sale.

This bill raises the issue of whether such regulation of the labeling of foreign honey impermissibly discriminates against foreign or interstate commerce.

The U.S. Constitution's Commerce Clause states that Congress shall have the power to regulate commerce with foreign nations and among the several states. The dormant or negative aspect of the Commerce Clause limits the power of the states to regulate both foreign and interstate commerce.

For example, state laws requiring country of origin labeling on retail packages of foreign meat have been struck down based on the finding that such state laws violate the Commerce Clause. See, eg., Ness Produce Co. v. Short, 263 F. Supp. 586 (D.C. Or. 1966), *aff'd*, 385 U.S. 537, 87 S. Ct. 742, 17 L. Ed. 2d 591 (1967) (holding that Oregon's country of origin meat labeling law unreasonably discriminated against imported meat in violation of the Commerce Clause); Tupman Thurlow Co. v. Moss, 252 F. Supp. 641 (M.D. Tenn. 1966) (holding that Tennessee's foreign origin meat labeling law violated the Commerce Clause); Armour & Co. v. State of Nebraska, 270 F. Supp. 941 (D.C. Neb. 1967) (holding that Nebraska's country of origin meat labeling law violated the Commerce Clause); International Packers Limited v. Hughes, 271 F. Supp. 430 (S.D. Iowa 1967) (holding that Iowa's country of origin meat labeling law violated the Commerce Clause).

Furthermore, the courts in Ness, 263 F. Supp. at 589, and International Packers Limited, 271 F. Supp. at 434, both noted in their opinions that neither state showed that imported meat was not fit for human consumption or resulted in harm to the consuming public, but that even if such harm had been established, the state's labeling laws related only to the origin of the meat, and not to the quality of the meat.

Similarly, this bill's country of origin labeling requirement relates only to the place of origin of the foreign honey and not to the quality of the honey, even though the bill's purpose purports to address reconstituted, adulterated, or contaminated sweeteners. Therefore, a court may find that this bill does not advance a legitimate state interest, or that any putative benefits are outweighed by its burden on foreign or interstate commerce.

Moreover, section 148-B(c) of the bill precludes the sale of unlabeled honey. This potentially may be construed by the courts as discriminatory on its face, and if so, it would be presumed to be invalid. In this event, the bill would be subject to strict scrutiny

and would be struck down unless the State could show that it had no other means to advance a legitimate state interest.

We respectfully recommend that this bill be held by the Committee.



Hawaii Farm Bureau
F E D E R A T I O N

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PH: (808)848-2074; Fax: (808) 848-1921

February 12, 2008

HEARING BEFORE THE
SENATE COMMITTEE ON AGRICULTURE AND HAWAIIAN AFFAIRS

TESTIMONY ON SB 2585
RELATING TO HONEY

Chair Tokuda and committee members:

My name is Alan Takemoto, Executive Director, of the Hawaii Farm Bureau Federation, which is the largest non-profit general agriculture organization representing approximately 1,600 farm and ranch family members statewide.

The Hawaii Farm Bureau Federation (HFBF) supports SB 2585, which requires grocers to list the country of origin of all honey sold. We believe that it is important to notify the consumer what country or origin their food is coming from. As food safety certification is being demanded by the consumers and tracing the food products down to the farm operation is becoming a requirement, we would agree that we need to know where our meats and other agricultural products are coming from, especially when it is coming in from other countries.

We also recognize the difficulty of traceability when it goes through various stages of processing or repackaging. However, the country of origin labeling concept would help the U.S. and local agricultural industry in Hawaii by encouraging our local residents to buy local.

Thank you.

LATE

TESTIMONY OF CHRISTOPHER S. WARD IN STRONG SUPPORT OF SB2585

**BEFORE THE SENATE COMMITTEE ON AGRICULTURE AND HAWAIIAN AFFAIRS
FEBRUARY 12, 2008, ROOM 224, AT 2:45 PM, THE STATE CAPITOL.**

Aloha Chairperson Tokuda and Members of the Committee!

As beekeeper, member of the Hawai'i Beekeepers' Association, a co-worker of **Manoa Honey Company**, and on behalf of all beekeepers, consumers of fine Hawaiian honey, and farmers whose crops depend on pollination by our honey bees, **I wish to testify in strong support of SB2585 that establishes Country of Origin Labeling requirements for any honey sold in the state of Hawai'i, under HRS Chapter 147.**

All we are saying, give our bees and very hardworking beekeepers a chance. . . to compete on an equitable basis!

Christopher S. Ward
2623 Halelana Place, Honolulu, HI 96822

