

STAND. COM. REP. NO.

1076

Honolulu, Hawaii

MAR 27 2009

RE: H.B. No. 1611  
H.D. 2  
S.D. 1

Honorable Colleen Hanabusa  
President of the Senate  
Twenty-Fifth State Legislature  
Regular Session of 2009  
State of Hawaii

Madam:

Your Committee on Water, Land, Agriculture, and Hawaiian Affairs, to which was referred H.B. No. 1611, H.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO LABELING OF MEAT AND FISH PRODUCTS,"

begs leave to report as follows:

The purpose of this measure is to require truthful labeling of meat and fish that have been gas-treated.

Your Committee received testimony in support of this measure from one organization and one private citizen. Testimony in opposition to this measure was received from one state agency and one organization. Testimony with comments on this measure was received from one state agency and one organization. Written testimony presented to the Committee may be reviewed on the Legislature's website.

Your Committee finds that the United States Food and Drug Administration has determined that the use of safe levels of carbon monoxide in treating meat is not harmful to human health. However, it is possible for treated meat to appear fresh to the consumer but still contain high bacteria levels indicative of spoilage. It has been suggested that the "use, sell, or freeze by" date listed on packaged meat or fish may sometimes be extended due solely to the color of the contents rather than the actual freshness.



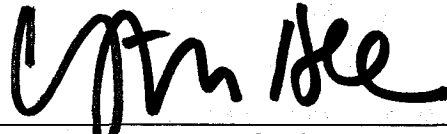
The Department of Health checks for adherence to proper labeling requirements and ensures that products are not offered for sale past their expiration dates through routine food safety inspections and other enforcement mechanisms. However, the Department of Health testified that it focuses most enforcement efforts on the accurate labeling of fish products, relying on the United States Department of Agriculture to enforce regulations for meat labeling. Your Committee notes that this measure is intended to focus primarily on the accurate labeling of meat products sold in Hawaii.

Your Committee has amended this measure by:

- (1) Clarifying that a violation of the labeling requirements contained therein constitutes a misdemeanor offense;
- (2) Making it effective upon approval; and
- (3) Making technical, nonsubstantive changes for the purpose of clarity and accuracy.

As affirmed by the record of votes of the members of your Committee on Water, Land, Agriculture, and Hawaiian Affairs that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1611, H.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1611, H.D. 2, S.D. 1, and be referred to the Committee on Commerce and Consumer Protection.

Respectfully submitted on  
behalf of the members of the  
Committee on Water, Land,  
Agriculture, and Hawaiian  
Affairs,




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CLAYTON HEE, Chair



The Senate  
Twenty-Fifth Legislature  
State of Hawaii

**Record of Votes**  
**Committee on Water, Land, Agriculture and Hawaiian Affairs**  
**WTL**

Bill / Resolution No.:* <b>HB 1611, HD 2</b>	Committee Referral: <b>WTL, CPN</b>	Date: <b>3-23-09</b>		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
HEE, Clayton (C)	✓			
TOKUDA, Jill N. (VC)				✓
BUNDA, Robert				✓
FUKUNAGA, Carol	✓			
KOKUBUN, Russell S.	✓			
TAKAMINE, Dwight Y.	✓			
HEMMINGS, Fred				✓
<b>TOTAL</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>3</b>
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
<b>Distribution:</b> Original    Yellow    Pink    Goldenrod File with Committee Report    Clerk's Office    Drafting Agency    Committee File Copy				

\*Only one measure per Record of Votes

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# A BILL FOR AN ACT

RELATING TO LABELING OF MEAT AND FISH PRODUCTS.

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

1           SECTION 1. Chapter 328, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4           "§328-       Fish products; labeling. Fish products that have  
5 been gas-treated to approximate the appearance of freshness  
6 shall bear a label indicating:

7           (1) The type of gas that was used; and

8           (2) A statement that the gas treatment was used to  
9           approximate the appearance of freshness."

10          SECTION 2. Section 159-3, Hawaii Revised Statutes, is  
11 amended by amending the definition of "misbranded" to read as  
12 follows:

13          ""Misbranded" shall apply to any carcass, part thereof,  
14 meat, or meat products under one or more of the following  
15 circumstances:

16          (1) If its labeling is false or misleading in any  
17             particular[-];

- 1 (2) If it is offered for sale under the name of another  
2 food[-];i
- 3 (3) If it is an imitation of another food, unless its  
4 label bears, in type of uniform size and prominence,  
5 the word "imitation" and immediately thereafter, the  
6 name of the food imitated[-];i
- 7 (4) If its container is made, formed, or filled as to be  
8 misleading[-];i
- 9 (5) If in a package or other container unless it bears a  
10 label showing:
- 11 (A) The name and place of business of the  
12 manufacturer, packer, or distributor[-]; and
- 13 (B) An accurate statement of the quantity of the  
14 contents in terms of weight, measure, or  
15 numerical count; provided that reasonable  
16 variations may be permitted and exemptions as to  
17 small packages may be prescribed by the board[-];i
- 18 (6) If any word, statement, or other information required  
19 by or under authority of this chapter to appear on the  
20 label or other labeling is not prominently placed  
21 thereon with the conspicuousness as compared with  
22 other words, statements, designs, or devices, in the

1 labeling and in the terms as to render it likely to be  
2 read and understood by the ordinary individual under  
3 customary conditions of purchase and use[-];

4 (7) If it purports to be or is represented as a food for  
5 which a definition and standard of identity or  
6 composition has been prescribed by the board under  
7 this chapter unless:

8 (A) It conforms to the definition and standard[-];  
9 and

10 (B) Its label bears the name of the food specified in  
11 the definition and standard and, insofar as may  
12 be required by the regulations, the common names  
13 of optional ingredients (other than spices,  
14 flavoring, and coloring) present in the food[-];

15 (8) If it purports to be or is represented as a food for  
16 which a standard of fill of container has been  
17 prescribed by the board under this chapter, and it  
18 falls below the standard of fill of container  
19 applicable thereto, unless its label bears, in the  
20 manner and form as the board prescribes, a statement  
21 that it falls below the standard[-];

- 1 (9) If it is not subject to paragraph (7), unless its  
2 label bears:
- 3 (A) The common or usual name of the food, if any  
4 there be~~[-]~~; or
- 5 (B) In case it is fabricated from two or more  
6 ingredients, the common or usual name of each  
7 ingredient; except that spices, flavorings, and  
8 colorings may with the approval of the board be  
9 designated as spices, flavorings, and colorings  
10 without naming each; provided that to the extent  
11 that compliance with the requirements of this  
12 subparagraph is impracticable, or results in  
13 deception or unfair competition, exemptions shall  
14 be established by the board~~[-]~~; ;
- 15 (10) If it purports to be or is represented for special  
16 dietary uses, unless its label bears the information  
17 concerning its vitamin, mineral, and other dietary  
18 properties as the board, after consultation with the  
19 Secretary of Agriculture and concurrence by the  
20 department of health, determines to be and prescribes  
21 as necessary [~~in order fully~~] to fully inform  
22 purchasers as to its value for the uses~~[-]~~; ;

1 (11) If it bears or contains any artificial flavoring,  
2 artificial coloring, or chemical preservative, unless  
3 it bears labeling stating that fact; provided that to  
4 the extent that compliance with this paragraph is  
5 impracticable, exemptions shall be established by the  
6 board[-];

7 (12) If it fails to bear, directly thereon or on its  
8 container, as the board may prescribe, the inspection  
9 legend and, unrestricted by any of the foregoing,  
10 other information as the board may require to assure  
11 that it will not have false or misleading labeling and  
12 that the public will be informed of the manner of  
13 handling required to maintain the meat or meat  
14 products in a wholesome condition[-]; or

15 (13) If the meat or meat products have been gas-treated to  
16 approximate the appearance of freshness, but do not  
17 bear a label indicating:

18 (A) The type of gas that was used; and

19 (B) A statement that the gas treatment was used to  
20 approximate the appearance of freshness."

21 SECTION 3. Section 328-29, Hawaii Revised Statutes, is  
22 amended by amending subsection (a) to read as follows:



1           "(a) Any person who violates section 328- or section  
2 28-6 shall be [~~fin~~] guilty of a misdemeanor; provided that the  
3 maximum penalty shall be a fine of not more than \$500, [~~or~~  
4 ~~imprisoned]~~ a maximum term of imprisonment of not more than one  
5 year, or both."

6           SECTION 4. Statutory material to be repealed is bracketed  
7 and stricken. New statutory material is underscored.

8           SECTION 5. This Act shall take effect upon its approval.

H.B. NO. 1611  
H.D. 2  
S.D. 1

**Report Title:**

Fish; Meat; Labeling

**Description:**

Requires gas-treated meat and fish to be labeled as such. (SD1)

HB1611 SD1.DOC  
\*HB1611 SD1.DOC\*  
\*HB1611 SD1.DOC\*

**LINDA LINGLE**  
Governor



State of Hawaii  
**DEPARTMENT OF AGRICULTURE**  
1428 South King Street  
Honolulu, Hawaii 96814-2512

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

**DUANE K. OKAMOTO**  
Deputy to the Chairperson

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

**BEFORE THE SENATE COMMITTEE ON  
COMMERCE AND CONSUMER PROTECTION  
THURSDAY, APRIL 2, 2009  
10:00 A.M.  
ROOM 229**

**HOUSE BILL NO. 1611, HD2, SD1  
RELATING TO LABELING OF MEAT AND FISH PRODUCTS**

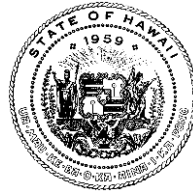
Chairperson Baker and Members of the Committee:

Thank you for the opportunity to provide testimony on House Bill No. 1611, HD2, SD1, relating to the treatment of pre-packaged meat with gas or other technology to enhance its color only. The Hawaii Department of Agriculture (HDOA) offers comments only on the proposed changes to Chapter 159, and defers to the Department of Health regarding the proposed changes to Chapter 328.

The state meat inspection program under the Chapter 159, HRS, Hawaii Meat Inspection Act was eliminated and inspection duties and responsibilities were turned over to the USDA Food Safety Inspection Service in the mid-1990's. The administrative rules governing the state meat inspection program were repealed soon thereafter.

The Department believes it would be more beneficial if the Legislature encouraged consumers to regularly check the "use, sell or freeze by" instructions that appear on packages of meat. It is also helpful to remind consumers that despite the appearance of the color of the meat, products that are gas treated can still contain bacteria or be subject to spoilage. Finally, we would point out that the HDOA has no authority to enforce Section 2 of this bill or to compel the USDA to enforce the measure if passed.

LINDA LINGLE  
GOVERNOR OF HAWAII



CHIYOME LEINAALA FUKINO, M.D.  
DIRECTOR OF HEALTH

STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P.O. Box 3378  
HONOLULU, HAWAII 96801-3378

In reply, please refer to:  
File:

**Senate Committee on Commerce and Consumer Protection**

**HB 1611, HD 2, SD 1, RELATING TO LABELING OF MEAT AND FISH PRODUCTS**

**Testimony of Chiyome Leinaala Fukino, M.D.  
Director of Health**

**April 2, 2009  
10:00am**

1 **Department's Position:** The Department appreciates the intent of the bill, but has concerns regarding  
2 its application to the department, and we therefore respectfully oppose this bill.

3 **Fiscal Implications:** As yet unquantified funds to support the proposed amendments.

4 **Purpose and Justification:** In part, this bill amends HRS Chapter 328 by introducing new language  
5 that labeling be required for fish products that have been gas-treated to enhance the product's color.

6 This testimony only addresses the proposed changes to HRS Chapter 328, a health statute. We defer to  
7 the Department of Agriculture regarding the proposed changes to HRS Chapter 159 regarding meat  
8 labeling.

9 We appreciate that consumers may think that the carbon monoxide treated food is younger than  
10 it is and that consumers may want to know if it has been treated.

11 The proposed change to HRS chapter 328 is unnecessary, because HRS section 328-10 and  
12 Chapter 11-19, Hawaii Administrative (HAR) already address the issue of proper labeling of products  
13 treated with chemical preservatives, including gases.

1 HAR section 11-29-8 includes by reference is 21 CFR, Part 101; which addresses proper labeling  
2 of food products. Specifically 21 CFR Section 101.22(j) states:

3 “A food to which a chemical preservative(s) is added shall, except when exempt pursuant to  
4 101.100 bear a label declaration stating both the common or usual name of the ingredient(s) and  
5 a separate description of its function, e.g., ‘preservative’, ‘to retard spoilage’, ‘a mold inhibitor’,  
6 ‘to help protect flavor’ or ‘to promote color retention’.”

7 Therefore, at a minimum, if a fish product has been gas-treated to promote color  
8 retention, the label must include the name of the product, what it has been treated with and the reason  
9 for using this type of preservative.

10 Fish products sold in packages by themselves (Ahi filets, Tombo cubes, Frozen Tilapia filets -  
11 No other ingredients) that were treated with carbon monoxide for color retention must be properly  
12 labeled like other processed foods in package form. The treatment must be declared in the ingredient  
13 statement of the label - "Ahi preserved with carbon monoxide to promote color retention".

14 When sold in unpackaged form (poke sold in trays in markets or fish filets in display cases)  
15 carbon monoxide-treated fish must be accompanied by a counter card or sign disclosing the treatment.  
16 For example, signage for ahi poke would read - "Ahi preserved with carbon monoxide to promote color  
17 retention".

18 The Department checks for proper labeling requirements through routine food safety inspections  
19 and will remind firms to comply, or take stronger action as appropriate. We also check to see that  
20 products are not offered for sale beyond their expiration date. During a food safety inspection, should a  
21 firm be discovered using an improper expiration date, an investigation of the firm’s policies and  
22 procedures regarding food handling practices will be initiated. However, we doubt that a labeling  
23 requirement will stop this type of misconduct.

1           Labeling has other limits. Any food product that has an expiration date (use, sell or freeze by  
2 date) can have high bacterial levels and still be within the expiration date if the food product has been  
3 mishandled (e.g., food held at improper temperature for too long). The concept that a food product can  
4 appear “fresh” and still have the potential to cause foodborne illness is not unique to CO-treated fish or  
5 meats; as the major outbreak associated with consuming fresh spinach has shown. Locally caught fresh  
6 fish have the potential to cause ciguatera intoxication and there no way the fisherman or the consumer  
7 can determine which fish will cause illness based on appearance.

8           Education of commercial firms and consumers on proper food handling and preservation, in  
9 relation to time and temperature, remain important.

10           We thank you for the opportunity to testify.



March 27, 2009

The Honorable Rosalyn H. Baker  
Chair, Commerce and Consumer Protection  
Hawaii State Capitol, Room 229  
Honolulu, HI 96813

**RE: HB 1611 (Say) – OPPOSE**

Dear Chair Baker and Members of the Committee:

On behalf of the Grocery Manufacturers Association (GMA), I am writing to express our opposition to House Bill 1611, which would require labeling of meat and fish that has been gas-treated.

GMA represents the world's leading food, beverage and consumer products companies. The Association promotes sound public policy, champions initiatives that increase productivity and growth and helps to protect the safety and security of the food supply through scientific excellence. The GMA board of directors is comprised of fifty-two chief executive officers from the Association's member companies. The \$2.1 trillion food, beverage and consumer packaged goods industry employs 14 million workers, and contributes over \$1 trillion in added value to the nation's economy. In Hawaii, GMA member companies employ 438 people at 10 facilities.

GMA promotes a uniform federal approach to the regulation of food labeling, and urges states to support the appropriate federal regulatory agencies to avoid a patchwork of varying state food labeling standards that would make compliance virtually impossible for our manufacturers.

Because gas treatment of meat and fish has been determined to be safe, there is no need for Hawaii to require a label that may mislead consumers by suggesting a warning. FDA has accepted several Generally Recognized As Safe (GRAS) notifications on the use of carbon monoxide in modified atmospheric packaging when used for maintaining wholesomeness, provide flexibility in distribution and reduce shrinkage of the meat.

For these reasons, the Grocery Manufacturers Association must respectfully oppose HB 1611.

Sincerely,

Caroline Silveira  
Director, State Affairs  
Grocery Manufacturers Association

**GROCERY MANUFACTURERS ASSOCIATION**





# HAWAII TEAMSTERS AND ALLIED WORKERS, LOCAL 996

Affiliated with the International Brotherhood of Teamsters

1817 Hart Street

Telephone: (808) 847-6633

Honolulu, Hawaii 96819-3205

Fax: (808) 842-4575

Sen. Rosalyn Baker, Chair  
Sen. David Ige, Vice-Chair  
Committee on Commerce and Consumer Protection.

Glenn Ida  
Representative  
Thursday, Apr. 2, 2009, at 10 AM  
Conference Room 229

The Hawaii Teamsters Local 996 strongly supports HB 1611, HD2, SD1, Relating to Labeling of Meat and Fish Products.

Currently packages of meat that have gas technology applied to them are not required to list it on the label and most disturbing it is placed in same area of the meat case with meat products that have been traditionally processed as fresh cut or within the store premises.

Gas technology only enhances the color of the meat product allowing the expiration date to be moved by up to 5 days depending on the cut of meat. Gas technology does nothing to maintain the sanitation of the product. By placing the packages of the gas and fresh cut in the same place may be deceiving the consumers in thinking that the gassed meat is fresher because of the appearance and expiration date, which will be the only basis of the consumers' decision to purchase that Meat Product. Compare that to purchasing fresh fruit which can be directly handled, inspection of all sides and/or sniffed for freshness.

HB 1611, HD2, SD1, will require that gassed meat products to be appropriately labeled to advise the consumer what has been added to the meat in processing just like the requirements of labeling fish products containing Carbon Monoxide Gas.

The Hawaii Teamsters Local 996 strongly supports HB 1611, HD2, SD1, Relating to the Labeling of Meat and Fish Products.

Thank you for allowing me to testify on this important matter.

# Public Affairs

John Mendez

Senior Manager, Public Affairs

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April 1, 2009

Senator Rosalyn H. Baker, Chair  
Senator David Y. Ige, Vice Chair  
Committee on Commerce and Consumer Protection  
Hawaii State Capitol, Room 229  
Honolulu, HI 96813

**RE: HB1611, HD2, SD1, Relating to Labeling of Meat and Fish Products**

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

I am writing today on behalf of Wal-Mart Stores, Inc. to express our views on HB 1611. Like you, we support the health and safety of our customers and we work to ensure the food products we sell are safe, wholesome and nutritious. In fact, we consider food safety a critical tenet in the service to our customers. However, we have several concerns with HB 1611 as currently drafted.

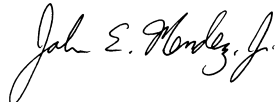
Under current federal regulations, modified atmosphere packaging (MAP) for many food products are approved and considered Generally Regarded as Safe or “GRAS” by the U.S. Food and Drug Administration. In addition, MAP is approved for use in meat products by the Food Safety Inspection Service (FSIS) at the U.S. Department of Agriculture. GRAS substances, for which use in food is proven safe by science or has a history of use before 1958, are approved for use by the FDA.

We respect the role Hawaii and other states play in ensuring the safety of our citizens’ food supply. However, as a national retailer operating stores, supercenters Sam’s Clubs and Neighborhood Markets in all 50 states and Puerto Rico, we support consistency and uniformity in labeling for food products nationally.

In addition, the U.S. Congress is currently considering legislation regarding modified atmosphere packaging for meat and seafood products. As Congress moves new federal food safety and labeling legislation, it would prudent to defer to any new federal regulations in this matter.

A reasonable solution to ensuring consumer protection for such products would be to require a use-by or sell-by date for food products in a modified atmosphere package. Providing this objective information will ensure customers have the most reliable information available to determine the safety and quality of the products they purchase.

Sincerely,

A handwritten signature in black ink that reads "John E. Mendez, Jr." in a cursive style.

John Mendez, Public Affairs and Government Relations  
Wal-Mart Stores, Inc. and Sam's Club

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Sunday, March 29, 2009 8:24 PM  
**To:** CPN Testimony  
**Cc:** pennysfh@hawaii.rr.com  
**Subject:** Testimony for HB1611 on 4/2/2009 10:00:00 AM

Testimony for CPN 4/2/2009 10:00:00 AM HB1611

Conference room: 229  
Testifier position: support  
Testifier will be present: No  
Submitted by: Penny Levin  
Organization: Individual  
Address: Wailuku, Hawaii  
Phone:  
E-mail: [pennysfh@hawaii.rr.com](mailto:pennysfh@hawaii.rr.com)  
Submitted on: 3/29/2009

Comments:

I strongly support this measure. Consumers have a right to know when our meats and fish are gas-treated, thereby falsely suggesting that the meat is fresher. Local fishermen and ranchers already have a tough enough time competing against cheaper cuts from the mainland. The national level grocery associations don't care at all whether we are eating healthier, fresher food; they care about selling a mass bought product. The fact that HDOH turned over the duties of inspection to federal USDA inspection services clearly indicates no one is looking out for our local health and safety. DOH claims it has no means to enforce additional labeling because of its abdication of responsibilities. This does not mean, however, that the state can not restore that authority and provide consumers with better information and better food choices. Please require the labeling to occur before it leaves mainland docks. Then it does not cost us anything. Eat local, support local growers and fishermen. Support HB1611. Mahalo.