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Governor



State of Hawaii
DEPARTMENT OF AGRICULTURE
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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 HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE
MONDAY, MARCH 23, 2009
2:15 PM
ROOM 325**

**SENATE BILL NO. 1223, SD1, HD1
RELATING TO HAWAII MADE PRODUCTS**

Chairperson Herkes and Members of the Committee:

Thank you for this opportunity to provide testimony on Senate Bill No. 1223, SD1, HD1, relating to Hawaii made products. This bill amends Chapter 486-119, Hawaii Revised Statutes by adding language that is more restrictive to the advertising of products labeled "Made in Hawaii" and directs the Department of Agriculture to identify issues relating to the Hawaii-made products laws and to propose workable solutions, including solutions for enforcement. The Department of Agriculture supports this measure.



HAWAII FOOD INDUSTRY ASSOCIATION

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March 23, 2009

To: House Committee on Consumer Protection & Commerce
Rep. Robert N. Herkes, Chair
Rep. Glenn Wakai, Vice Chair

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

Re: SB 1223, SD1, HD1 RELATING TO HAWAII MADE PRODUCTS

In Support

Chairs & Committee Members:

As the producer of the Made In Hawaii Festival, maintaining the credibility of both the event and the words Made In Hawaii are a part of our mission. We are actually a small business incubator allowing our citizens to create something and test market their ideas to over 35,000 visitors that attend this annual event, which by the way was the brainstorm of former Representative David Morihara.

SB 1223, SD1, HD1 is a positive way to address misuse of the words Made In Hawaii, and we fully support the inclusion of advertising. While maintaining credibility of the Festival, it is a challenge at times, but with the help of both the Department of Agriculture and the Office of Consumer Protection, we have been successful in weeding out those few exhibitors that put money ahead of credibility.

We opposed increasing the 51% to 65% that was in the original draft. All laws relating to Hawaii Made Products should have some consistency and be comparable or we will have problems identifying what is or is not permitted.

The attached formula is something we worked on for three years unsuccessfully because of disagreements, 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, thus we have to rely on discretion and common sense. We generally make our determination based on the product being manufactured, assembled, fabricated, or produced within the State. This is not arbitrary. 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 foul play is involved. While we have vendors sign agreements that they will comply with the laws, we still have some products removed.

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
<hr/>	
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—Hawaii C \$ _____

Manufacturing Cost—Hawaii

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

(E) Indirect Labor Cost E \$ _____

(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

Sharon Sagayadoro

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, March 21, 2009 9:00 PM
To: CPCtestimony
Cc: coh_mela@yahoo.com
Subject: Testimony for SB1223 on 3/23/2009 2:15:00 PM

Testimony for CPC 3/23/2009 2:15:00 PM SB1223

Conference room: 325
Testifier position: support
Testifier will be present: Yes
Submitted by: Mela Kealoha-Lindsey
Organization: CREATIONS OF HAWAII
Address: 3133 Waialae Avenue, No. 3-3004 Honolulu, O'ahu, Hawai'i 96816
Phone: (808)735-4510 Ext. 2
E-mail: coh_mela@yahoo.com
Submitted on: 3/21/2009

Comments:
Aloha,

I would like to present at the hearing and I am resending my earlier testimony that was not processed through the on-line testimonial site for the previous hearing on 2/25/09, 3/3/09, and 3/18/09.

A hui hou a me malama pono,
Mela Kealoha-Lindsey
Founder and Chief Executive Officer
CREATIONS OF HAWAII
Division of the Mela Kealoha-Lindsey Foundation