

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



LORETTA J. FUDDY, A.C.S.W., M.P.H.  
DIRECTOR OF HEALTH

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

In reply, please refer to:  
File:

**House Committee on Consumer Protection and Commerce**

**SB 1086, SD1, HD1, RELATING TO CONSUMER INFORMATION**

**Testimony of Loretta J. Fuddy, A.C.S.W., M.P.H.  
Director of Health**

**April 4, 2011  
2:00 P.M.**

1 **Department's Position:** We respectfully oppose the proposed amendments to Hawaii Revised Statutes  
2 (HRS) Chapter 328.

3 **Fiscal Implications:** Increasing the number of items regulated as this bill does, implies a need for more  
4 enforcement staff.

5 **Purpose and Justification:** This bill proposes amendments to the HRS Chapter 328, which will add  
6 two new sections and will add previously frozen baked goods to a number of food items regulated by the  
7 Department without increasing the number of enforcement personnel. The bill is unnecessary from a  
8 health viewpoint.

9 As to health in general, appropriate labeling can help to verify the identity and composition of a  
10 food in instances when the food may be implicated in a foodborne illness. Uncooked food that was  
11 previously frozen and not thawed properly may contribute to a foodborne illness. However, from a  
12 health standpoint, we do not see a need to label thawed baked goods "previously frozen".

13 The U.S. Food and Drug Administration (FDA) 21 CFR 101.95 defines the term "fresh", when  
14 used on the label or in labeling of a food in a manner that suggests or implies that the food is  
15 unprocessed, means that the food is in its raw state and has not been frozen or subjected to any form of

1 thermal processing or any other form of preservation. The Department can remove previously frozen  
2 bread products from sale that contain the term “fresh”, since the bread would be considered misbranded.  
3 Therefore, the addition of the “Fresh baked goods; advertising” in HRS Chapter 328 is unnecessary.

4 The Department appreciates your interest in protecting consumers. However, with present  
5 funding and manpower, we must focus our resources on higher risk areas of food safety that can injure  
6 the public’s health. The time and effort involved in determining labeling compliance for previously  
7 frozen bread products that are sold thawed would place a significant burden on the Food and Drug  
8 Branch staff and would detract us from our health focus. Even if new and additional resources were  
9 received, they would be better spent focusing on the prevention of more significant health threats.  
10 However, such increases are not part of the executive biennium budget. The health and well-being of  
11 the public will be better served if our time and effort remains focused on more significant health issues  
12 such as responding to food product recalls, conducting food safety inspections, and removing  
13 adulterated and/or misbranded products from sale.

14 Thank you for the opportunity to testify.

LATE TESTIMONY

To: Rep. Robert Herkes, Chair  
Rep. Ryan Yamane, Vice Chair  
House Committee on Consumer Protection and Commerce  
Hawaii State Capitol Room 320  
Honolulu, HI 96813  
Fax: 586-8404

From: Leslie Ogawa

Subject: S.B. 1086, SD1, HD1 - Relating to Consumer Information

I am once again writing in support of S.B. 1086. I am in favor of the Senate version rather than the version you are considering today.

As a matter of the "consumer's right to know," I would like to see sliced, sandwich-style bread labeled if it was previously frozen. This would allow consumers to make informed decisions.

As an early morning grocery shopper, there have been numerous occasions where I have chosen not to buy bread because it felt cold, hard or had condensation inside the packaging. I assumed the bread had been frozen and was insufficiently thawed but was never really sure.

I would be less inclined to reject those particular brands of bread if the product itself was clearly marked "product previously frozen."

I also do not believe a single sign in the bread aisle is sufficient to inform consumers. The requirement to properly label a product should fall on the manufacturer, not the retailer.

Thank you very much for allowing me this opportunity to voice my concerns. Mahalo.



April 4, 2011

Representative Robert N. Herkes, Chair  
Representative Ryan I. Yamane, Vice Chair  
House Committee on Consumer Protection & Commerce

Re: SB1086 SD1 HD1: Relating to Consumer Information

Dear Representative Herkes,

We appreciate the opportunity to submit our testimony and express our opposition to proposed legislation effecting "fresh and frozen labeling."

It is the opinion of Times Supermarket that this proposal creates an unnecessary burden given existing federal laws and health standards, currently in place. Furthermore, we believe that an additional "labeling" requirement will require retailers to educate customers on what "previously frozen" means and why a product they have been purchasing is now having an appearance of being second rate rather than "fresh".

Times Supermarket provides a variety of thaw and serve programs that offer our customers choices. Like any consumer, our customers value choice and they value cost savings, which this proposed legislation seeks to limit. Being mandated to display additional labeling is going to increase cost of production for suppliers, thereby forcing retailers to increase cost on a given product. In these economic times, it is important to Times Supermarket to be able to provide the products our customers demand, at the best possible cost.

It is important to understand that it is "choice" that also offers our customers access to products made in Hawaii with local supplies. While we have an extensive thaw and serve program we also provide locally baked products that don't require the same distribution logistics as our frozen foods vendors. Our customers require access to both which is why we believe that this mandate will disrupt the balance of offerings we provide.

In closing it is the opinion of Times Supermarket that this proposed legislation is an unnecessary duplication of maintaining consumer awareness on frozen products and would request a no vote on the legislation. We believe that the current method of health safety standards are well placed and well enforced to ensure our customers are not provided unsafe products. We thank you for your consideration.

Respectfully,  
Times Supermarket

Bob Gutierrez  
Director, Government Affairs Department



March 31, 2011

Re: **S.B. NO. 1086; S.D.1; H.D.1; S328, Fresh Baked Goods; Advertising**

To Whom It May Concern,

I am writing this letter on behalf of Aloha Air Cargo in support of S.B. NO 1086 and our customer Love's Bakery. The implications of this bill are significant not only to Love's Bakery, but to the sustainability of Aloha Air Cargo and its employees.

Love's and Aloha Air Cargo's business relationship dates back to the mid 1980's. Love's was one of Aloha's flagship customers and reasons for the start of our overnight cargo business. This relationship continues today almost 30+ years later. Aloha provides reliable and cost effective service so that Love's customers, on the neighbor islands, can enjoy fresh baked goods.

In 2010, Aloha Air Cargo carried 11.6 million pounds of Love's bread/products between the islands, representing approximately 15% of Aloha's total business. Much of Aloha's flight schedule and commensurate staffing requirements are predicated on the volume that Love's provides. Any reduction in this volume will directly result in the loss of jobs at Aloha Air Cargo. For instance, if Love's went out of business completely, and Aloha were to balance the revenue loss by cutting costs from labor, it would equate to approximately 96 laid-off employees, or nearly one-third of our entire company.

My personal opinion is I would like to be fully aware of what I'm buying. There is a substantial difference between fresh and previously frozen baked goods. Truth in labeling is important for consumers to make informed decisions on purchases.

Thank you in advance for your consideration. Please do not hesitate to contact me in regards to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Lee Steele".

Lee Steele

President

[lsteel@alohaaircargo.com](mailto:lsteel@alohaaircargo.com)

808.836.7477

April 4, 2011

To: House Committee on Consumer Protection & Commerce  
The Honorable Robert N. Herkes, Chair  
The Honorable Ryan I. Yamane, Vice Chair

From: Susan Houghton, Director of Public Affairs and Government Relations

**Re: Safeway Comments for SB 1086 SD1 HD1: Relating to Consumer Information**

I am writing to notify you of Safeway's strong opposition to SB1086 SD1 HD1: Relating to Consumer Information.

As you are aware, Safeway operates 19 stores in Hawaii – including two that are currently under construction in Hilo and Honolulu.

I have attached secondary testimony from our Quality Assurance Manager, Nathan Smith, that illustrates that the proposed labeling of bread that has been previously frozen could actually imply to the consumer that the quality of the product was somehow inferior – when it is not.

As you will note by his testimony, the freezing process does not degrade the quality. Rather, the process of freezing bread and dough is now considered an industry norm – and can, in many cases, actually help prevent product from becoming stale or susceptible to mold.

We believe our customers have benefited from these standard industry processes. Our labeling and bread making procedures meet applicable federal standards – ensuring the very best quality for the Hawaii consumer.

I urge you to consider the wealth of businesses and industries that would be significantly impacted by passage of this legislation – as well as higher prices it could mean for the consumer. For that reason alone, we urge opposition.

Thank you for your consideration of our opinion on this important legislation. Please do not hesitate to contact me at (925) 467-2212 or our Hawaii District Manager, George Glukfeld at (808) 524-4554 if you desire further information.

Sincerely,

Susan M. Houghton  
Director of Public Affairs and Government Relations

February 8, 2011

To: Senate Committee on Commerce and Consumer Protection  
Re: SB 1086 + SB 1093

As the Quality Assurance Manager for Safeway's Bakery Business Unit, I wanted to share my opinion on the suggestion of labeling how a product is produced or processed along with the ingredient declaration.

For many years, bakeries have produced product that is frozen prior to distribution. Bakery products are often frozen either when production capacities are limited or when shipping distances are long. A common example would be the accumulation and freezing of hamburger and hot dog buns needed for high demand holidays such as Memorial Day, Independence Day, and Labor Day. Another example of the need to freeze bakery products is the increased use of centralized production facilities followed by long interstate transportation. Use of frozen products has expanded as the baking industry, similar to other industries, has consolidated with smaller less efficient and less profitable production facilities closing and moving production to larger high-speed locations.

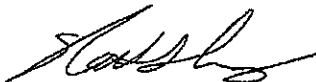
It is important to point out that properly freezing bread and other bakery products does not result in a degradation of quality due to carefully controlled freezing and thawing conditions and dramatically improved ingredient technology that has evolved over the last decades.

Previously frozen bread is non-distinguishable to never been frozen product. In fact, freezing product is a preferred storage method to refrigerated storage or storage in an excessively warm environment. Bakery products "stale" (get firm) most quickly when held at refrigerated temperatures. These temperatures draw out the moisture resulting in dry, poor quality product in a short amount of time. Warm storage dramatically slows staling, however the products may more quickly mold. Freezing, however, has the effect of essentially stopping the staling and molding process. Natural enzymes developed in the late 1980's, have been found to eliminate any product degradation during the freezing and thawing process.

One such example is orange juice, where consumers must be informed if it is made from frozen concentrate. That product, when produced from frozen concentrate, is notably different from that which is produced from non-concentrated freshly squeezed juice. Another example is that consumers must be informed if their dairy products have been pasteurized or not. Pasteurization makes a notable change in the product as well is preferred by most consumers as a critical food safety processing step. In these cases it has become standard to include processing information on the packaging.

Application of a statement on the label that the product had been previously frozen could actually be interpreted as deceptive in that it would improperly imply product of a poorer quality than product that had never been frozen. The freezing process does not chemically change or in any other manner degrade quality when properly executed. I hope this information has been helpful to you – but from my perspective, there is absolutely no decrease in quality for the consumer with bread that has been previously frozen.

Sincerely,



Nathan L. Smith  
Quality Assurance Manager  
Safeway Inc. – Bakery Business Unit

April 4, 2011

STATE TESTIMONY

TO: Rep. Robert Herkes, Chair  
Rep. Ryan Yamane, Vice Chair  
House Committee on Consumer Protection and Commerce  
*Email: [CPCTestimony@Capitol.hawaii.gov](mailto:CPCTestimony@Capitol.hawaii.gov)*

FROM: HAWAII PORTS MARITIME COUNCIL

RE: **S.B. 1086, SD1, HD1 – Relating to Consumer Information**

On behalf of the members unions of the Hawaii Ports Maritime Council, I am writing in support of S.B. 1086. However, we prefer the version that the Senate passed, instead of the version you are considering today. We want sliced, sandwich-style bread to be labeled if it was previously frozen.

We believe it is the consumer's right to know if bread was previously frozen or not. The loaves of bread we see in the store look fresh to us so we assume they're all fresh. Nothing on the package right now tells us otherwise. We can't even tell for sure if the bread was baked here in Hawaii or not because some packages only identify who the distributor is.

We would like all consumers to have information they need to make an informed choice. Labeling of each loaf of bread will do that. One sign on a store shelf will not. It's also not fair to expect the stores to be responsible for the sign.

While we prefer the version of the bill that would require labeling of slice, sandwich-style bread, our main concern is providing information to the consumer. If a sign is all we can get, we support it.

Please pass S.B. 1086.

Sincerely,

Hazel Galbiso, Secretary-Treasurer  
Hawaii Ports Maritime Council





The Association of Food, Beverage  
and Consumer Products Companies

## LATE TESTIMONY

April 4, 2011

The Honorable Robert N. Herkes  
Chair, House Consumer Protection & Commerce  
Conference Room 325  
Hawaii State Capitol  
415 South Beretania Street

**VIA-ELECTRONIC MAIL ONLY**

**RE: SB 1086 – OPPOSE**

Dear Chair Herkes:

On behalf of the Grocery Manufacturers Association (GMA<sup>1</sup>) I am writing to express our opposition to Senate Bill 1086 because it imposes unnecessary costs on bread products and creates an unfunded regulatory mandate for the State.

As currently proposed, SB 1086 requires "bread products that are baked and then frozen before sale shall be packaged with prominent labeling or printing that reads 'previously frozen'." To the best of GMA's knowledge, this mandatory labeling requirement would be unique to Hawaii and require special labeling to occur. This labeling will require additional labor and materials which in turn will make otherwise healthy and wholesome food products more expensive to Hawaii consumers. In short, SB 1086 serves as an interstate tariff by artificially

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<sup>1</sup> Based in Washington, D.C., the Grocery Manufacturers Association is the voice of more than 300 leading food, beverage and consumer product companies that sustain and enhance the quality of life for hundreds of millions of people in the United States and around the globe.

Founded in 1908, GMA is an active, vocal advocate for its member companies and a trusted source of information about the industry and the products consumers rely on and enjoy every day. The association and its member companies are committed to meeting the needs of consumers through product innovation, responsible business practices and effective public policy solutions developed through a genuine partnership with policymakers and other stakeholders.

In keeping with its founding principles, GMA helps its members produce safe products through a strong and ongoing commitment to scientific research, testing and evaluation and to providing consumers with the products, tools and information they need to achieve a healthy diet and an active lifestyle.

The food, beverage and consumer packaged goods industry in the United States generates sales of \$2.1 trillion annually, employs 14 million workers and contributes \$1 trillion in added value to the economy every year.

The Honorable Robert N. Herkes  
Chair, House Consumer Protection & Commerce  
April 4, 2011  
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increasing the price of bread products coming from the mainland without adding any value to the consumer.

SB 1086 also raises some questions that include, but are not limited to:

- What does this labeling mean to the consumer?
- Does this labeling requirement create unnecessary confusion in the marketplace?
- Will this requirement conflict with federal labeling requirements?
- Who will pay for the enforcement of SB 1086?

The current system of food labeling provides standardized information to the consumers and adequately allows for product distinction by permitting bakery items to be labeled as "fresh." Furthermore, imposing the type of labeling contemplated in SB 1086 provides no meaningful information to the consumer. Rather, we believe it is intended to merely create the mistaken impression that the product is of lesser quality and artificially increase its cost. In fact, when a similar legislative measure was considered in 2005, Hawaii Director of Health Chiyome Leinaala Fukino, M.D., stated in written testimony that "From a health standpoint, we do not see a need to label thawed, baked goods, such as bread, cookies, and pies..."

Consumer knowledge and product safety is paramount to GMA and its members because it is the foundation of consumer trust and product loyalty. Unfortunately, SB 1086 will create unnecessary confusion in the marketplace, artificially increase product prices, and otherwise impose a punitive labeling requirement on otherwise healthy and wholesome bread products. As such, the Grocery Manufacturers Association must respectfully oppose SB 1086.

Sincerely,

John Hewitt  
Western Region Director  
Grocery Manufacturers Association