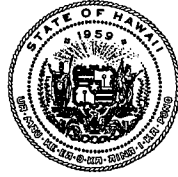


SB 179



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

In reply, please refer to:
File:

SENATE COMMITTEE ON WAYS AND MEANS

S.B. 179, RELATING TO THE DEPOSIT BEVERAGE CONTAINER PROGRAM

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

March 1, 2011
9:20 A.M.

1 **Department's Position:** The Department of Health strongly supports this measure.

2 **Fiscal Implications:** Unknown. The primary intent of this measure is not revenue enhancement for the
3 Deposit Beverage Container (DBC) Program, but to resolve product eligibility issues.

4 **Purpose and Justification:** The purpose of this bill is to eliminate the exemption for dietary
5 supplements from the DBC Program.

6 Dietary supplements were excluded at the start of the DBC Program along with drugs, medical
7 foods and infant formula because it was thought at that time that all of these products provided equal
8 medical value.

9 However, over time the Program has identified a class of products whose eligibility is not easily
10 determined because of a combination of beverage content and container labeling. The difficulty of the
11 situation is recognized in a U.S. Food and Drug Administration draft guidance document, issued in
12 December 2009, which cites the increasing trend in products which are labeled as supplements that may
13 in fact qualify, legally and functionally, as normal food products.

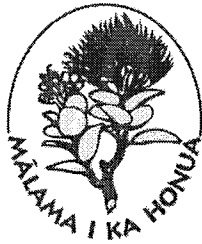
14 This makes it very difficult to make consistent eligibility determinations, and in some cases has
15 led to reversals of determinations by the DBC Program. These difficulties are frustrating to both the

1 deposit program and regulated distributors because of the disproportionate time and effort involved in
2 dealing with these products. The department believes that deleting the "dietary supplement" exemption
3 is the most efficient way of allowing more consistent eligibility determinations.

4 It should be clear that the exemption for drugs, medical food and infant formula remains in the
5 law. The department has no intention of modifying this exemption. The proposed change, if
6 implemented, is not intended to place a deposit on products that are specifically formulated and intended
7 to manage dietary deficiencies relating to a health condition.

8 Thank you for the opportunity to testify on this measure.

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Sierra Club Hawai'i Chapter

PO Box 2577, Honolulu, HI 96803
808.538.6616 hawaii.chapter@sierraclub.org

SENATE COMMITTEE ON WAYS AND MEANS

March 1, 2011, 9:20 A.M.

(Testimony is 1 page long)

TESTIMONY IN SUPPORT OF SB 179

Aloha Chair Ige and Committee Members -

The Sierra Club, Hawai'i Chapter, **supports** SB 179, which extends the deposit beverage container program to include dietary supplements. We suggest, however, this bill be amended to reflect the language contained in SB 2420 so as to include hard spirits and wine bottles in the beverage container program.

Hawaii's bottle law has proven to be an overwhelming success for Hawaii's environment, with **over 930 million bottles and cans diverted from Hawaii's landfills annually**. Beyond waste diversion, our recycling law reduces litter, creates jobs, and provides opportunities for churches, charities, and schools to fundraise. The recycling program proves that a little change can make a big difference.

Despite its success with redeeming over four billion beverage containers, **the bottle law can be improved**. Energy drinks are becoming increasingly popular and, unfortunately, these drinks are utilizing a loophole -- a "dietary supplement" exemption -- in order to evade complying with our beverage container (HI-5) law. There is no logical basis to exempt this growing class of beverages from our incredibly successful recycling program.

Thank you for the opportunity to testify.



HAWAII FOOD INDUSTRY ASSOCIATION (HFIA)
1050 Bishop St. Box 235
Honolulu, HI 96813
Fax : 808-791-0702
Telephone : 808-533-1292

DATE: Tuesday, March 1, 2011 TIME: 9:20 a.m. PLACE: CR 211

TO: COMMITTEE ON WAYS AND MEANS

Senator David Y. Ige, Chair; Senator Michelle Kidani, Vice Chair

FROM: Hawaii Food Industry Association - Lauren Zirbel, Government Relations

RE: SB 179 RELATING TO THE DEPOSIT BEVERAGE CONTAINER PROGRAM

Chairs & Committee Members:

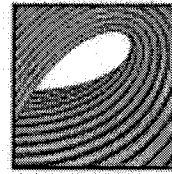
The Hawaii Food Industry Association opposes this bill.

Dietary supplements do not have the same use as other HI 5 products and as such they should not be included in HI 5. This is an unnecessary burden for the beverage industry as well as the retail industry.

Dietary Supplement Health and Education Act (DSHEA) places dietary supplements in a special category under the general umbrella of "foods" and removing their exemption from the bottle deposit law is inconsistent with how they are treated under federal law. Also, their inclusion in the bottle deposit program would be inequitable and in some instances the equivalent of charging a redemption fee for the plastic packaging of a meal replacement bar.

Thank you for the opportunity to testify.

Joy Leilei Shih, M.A.S
3267 Mokihana Street
Honolulu, HI 96816
(650) 380-5482
joyshih@hawaii.edu



Surfrider
Foundation
OAHU CHAPTER

SENATE COMMITTEE ON WAYS AND MEANS
MAR 1, 2011, 9:20 am
(Testimony is 2 pages long)

TESTIMONY IN FAVOR OF SB 179

Aloha Chair Ige and Members of the Committee:

My name is Joy Leilei Shih, I hold a Master of Advanced Studies in Marine Biodiversity and Conservation from Scripps Institution of Oceanography, am a graduate student researcher in marine biogeochemistry at the University of Hawai'i at Manoa, and serve on the Executive Committee of Surfrider Foundation Oahu. The Surfrider Foundation is a non-profit organization representing 4,000 members across the state of Hawai'i alone (and 50,000 members worldwide), and is dedicated to the protection and enjoyment of the world's oceans and coastlines through conservation, activism, research and education.

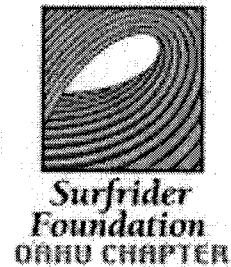
I am in strong support of SB 179, which would remove the exemption for dietary supplement drinks from the deposit beverage container program.

Many widely consumed "dietary supplement" drinks are currently exempt from the deposit beverage container program, leading to their exclusion from being recycled. These beverages marketed as "energy" or "dietary" supplement drinks include the likes of commonly consumed beverages such as "Red Bull", "Monster", and "Rockstar". Consequently, these containers do not enjoy the success of the Bottle law that effectively keeps drink containers out of the waste stream.

Hawai'i's beautiful unique geographic location also means unique opala issues. The average person in Hawai'i produces 6.2 pounds of opala a day. Where does it go? The "solution" thus far has been landfills, but with suitable landfill space becoming scarcer, last year saw serious discussion about such drastic steps as paying to ship trash to the mainland. Recent landfill overflow events reinforce the need to reduce waste by encouraging more recycling.

Hawai'i's Bottle law has been incredibly successful for Hawai'i's environment, with over 930 million bottles and cans diverted from Hawai'i's landfills annually. Beyond waste diversion, our recycling law reduces litter, creates jobs, and provides opportunities for churches, charities, and schools to fundraise. The recycling program proves that a little change can make a big difference, no pun intended.

Energy drinks continue to grow in popularity and unfortunately, these drinks are utilizing a loophole -- a "dietary supplement" exemption -- in order to evade complying with our beverage container (HI-5) law. There is no rationale basis to exempt this growing class of beverages from our incredibly successful recycling program.



The argument that such drinks are truly nutritional supplements is not a rigorous one; however, even in the event they do serve such a purpose, the deposit is fully recoverable, and as intended would encourage recycling through the efficacious program already in place and benefit Hawai`i's environment.

SB 179 would remove the exemption for dietary supplement drinks from the deposit beverage container program. The bill states that these beverages "are often sold in containers that are recyclable plastic, aluminum, or glass. The legislature further finds that the intended uses of these purported "energy" and "dietary" supplements are similar to, if not the same as, the intended use of many other sports drinks, sodas, and juice beverages that are sold in containers subject to the deposit beverage container program." (Page 1, lines 8-14)

I respectfully recommend that the bill be amended to include hard spirits and wine. This is the logical step following the recognition that the advance deposit fee of one cent is not working. Millions of bottles and containers are not being recycled. Approximately 21,917,760 bottles of wine were sold in Hawai`i in 2009. Recent newspaper articles indicate some recyclers are starting to refuse alcohol containers because the profit generated is minimal and these items are not a part of the HI-5 system.

I respectfully ask that this committee advance this measure.

Mahalo for the opportunity to testify.

Joy Leilei Shih



February 28, 2011

The Honorable David Y. Ige, Chair
Senate Committee on Ways & Means
Hawaii State Capitol, Room 211
Honolulu, HI 96813-2453

RE: SB 179 – OPPOSE

Dear Chairman Ige and Members of the Committee:

The Grocery Manufacturers Association¹ (GMA) and its more than three hundred members respectfully oppose SB 179 that would amend the existing beverage deposit law to include dietary supplement beverage containers because as drafted it is overly broad and will prejudicially include liquid meal replacements which are not designed to be used as a beverage.

The United States Food and Drug Administration currently regulates nearly all aspects of nutritional supplements including the packaging through the implementation of Dietary Supplement Health and Education Act (DSHEA) of 1994. DSHEA defines a dietary supplement as a product taken by mouth that contains a "dietary ingredient" intended to supplement the diet. The "dietary ingredients" in these products may include: vitamins, minerals, herbs or other botanicals, amino acids, and substances such as enzymes, organ tissues, glandulars, and metabolites. Dietary supplements can also be extracts or concentrates, and may be found in many forms other than liquids such as tablets, capsules, softgels, gels, bars, or powders. Whatever their form may be (solid, liquid, or other), DSHEA places dietary supplements in a special category under the general umbrella of "foods" and removing their exemption from the bottle deposit law is inconsistent with how they are treated under federal law.

¹ 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 David Y. Ige, Chair
Senate Committee on Ways & Means
Page 2 of 2

As currently drafted, SB 179 is overly broad in the application of its stated purpose and would include products not intended to be beverages. For example, on page two lines 20-21 of SB 179 it strikes, in whole, from the exemptions to a deposit beverage, the following (emphasis added):

(3) a liquid which is designed and consumed only as a dietary supplement and **not as a beverage** as defined in the Dietary Supplement health and Education Act of 1994.

While SB 179 stated purpose is to include “energy drinks”, its practical application as noted above goes way beyond and has the unintended consequence of including liquid meal replacement products.

Current law appropriately distinguishes these liquid nutritional and dietary supplements as health products when they are not intended to be used as a beverage. Often recommended by doctors or nutritionists these products are used, for example, as meal replacements, to combat obesity, and provide nutrients to people with health issues. For example, a person would not consume a liquid meal replacement product such as Ensure or SlimFast in addition to a steak dinner.

SB 179 is overly broad in its application and its intended purpose of including energy drinks into the bottle deposit program is not accomplished. Rather, SB 179 as currently drafted includes liquid meal replacements that are not designed and consumed with the intent of being a beverage.

For these reasons, GMA respectfully opposes SB 179.

Sincerely,

John Hewitt
Western Region Director
Grocery Manufacturers Association

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, February 27, 2011 9:47 PM
To: WAM Testimony
Cc: mrgach@att.net
Subject: Testimony for SB179 on 3/1/2011 9:20:00 AM

Testimony for WAM 3/1/2011 9:20:00 AM SB179

Conference room: 211
Testifier position:
Testifier will be present: No
Submitted by: Michael Reed Gach
Organization: Individual
Address:
Phone:
E-mail: mrgach@att.net
Submitted on: 2/27/2011

Comments:

I believe that all dietary and energy drinks such as Red Bull and Monster should be required to have their cans and bottles recycled, keeping these out of our waste system. Why should they be exempt? Our deposit beverage container program has proven successful and should be expanded to all drinks sold in our state.

--

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, February 27, 2011 2:37 PM
To: WAM Testimony
Cc: palmtree7@earthlink.net
Subject: Testimony for SB179 on 3/1/2011 9:20:00 AM

Testimony for WAM 3/1/2011 9:20:00 AM SB179

Conference room: 211
Testifier position: support
Testifier will be present: No
Submitted by: janice palma-glennie
Organization: Individual
Address:
Phone:
E-mail: palmtree7@earthlink.net
Submitted on: 2/27/2011

Comments:

Please help level the playing field by requiring the same disposal of all beverage containers by using this sane, proven program for doing that.

Mahalo for your support of this simple, but potentially effective, legislation.

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, February 27, 2011 7:04 PM
To: WAM Testimony
Cc: iliwai34@hawaii.rr.com
Subject: Testimony for SB179 on 3/1/2011 9:20:00 AM

Testimony for WAM 3/1/2011 9:20:00 AM SB179

Conference room: 211
Testifier position: support
Testifier will be present: No
Submitted by: Michael J. Duberstein
Organization: Individual
Address:
Phone:
E-mail: iliwai34@hawaii.rr.com
Submitted on: 2/27/2011

Comments:

I strongly support SB179. It remedies a loophole in current recycling programs. There is no logical reason these containers should be excluded any longer--and passage will serve to increase badly needed revenues. Please pass this important bill.

From: Nancy Davlantes [ndavlantes@aol.com]
Sent: Monday, February 28, 2011 1:00 PM
To: WAM Testimony
Subject: Testimony in support of SB179

Senate Ways and Means Committee
Tuesday, March 1, 2011, 9:20 a.m.

The exemption of commonly consumed “dietary” or “energy” drinks such as “Red Bull” and “Monster” from our successful recycling program should end.

When the state faces such unique and pressing waste management issues, there is no reason for anything that can be part of an existing recycling program not to be included in it and kept out of our waste stream.

Thank you for considering my comments.

Nancy Davlantes
47-228 Kamehameha Hwy
Kaneohe, HI