

SB 2824

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:

SENATE COMMITTEE ON ENERGY AND ENVIRONMENT
S.B. 2824, RELATING TO THE DEPOSIT BEVERAGE CONTAINER
PROGRAM

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

January 31, 2012
2:45pm

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

2 **Fiscal Implications:** This measure would likely increase revenue by an unknown amount.

3 **Purpose and Justification:** This bill proposes to eliminate the exemption for dietary supplements from
4 the Deposit Beverage Container (DBC) Program.

5 Dietary supplements were excluded from DBC Program along with drugs, medical foods and
6 infant formula. The dietary supplement exemption relies entirely on the federal Food and Drug
7 Administration's (FDA) regulation of the product category. However, FDA's regulatory approach of
8 these products gives manufacturers free reign to declare a product a dietary supplement or not.

9 The ambiguity of product labeling makes it very difficult for the DBC Program to make
10 consistent eligibility determinations on potential dietary supplements. These difficulties are frustrating
11 to both the deposit program and beverage distributors because of the disproportionate time and effort
12 involved in dealing with these products. The department believes that deleting the "dietary supplement"
13 exemption is the most efficient way of allowing more consistent eligibility determinations.

1 It should be clear that the exemption for drugs, medical food and infant formula remains in the
2 law. The department has no intention of modifying this exemption.

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

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HAWAII FOOD INDUSTRY ASSOCIATION (HFIA)

1050 Bishop St. Box 235
Honolulu, HI 96813
Fax : 808-791-0702
Telephone : 808-533-1292

DATE: Tuesday, January 31, 2012

PLACE: Conference Room 225

TIME: 2:45p.m.

TO: COMMITTEE ON ENERGY AND ENVIRONMENT: Sen. Mike Gabbard, Chair;
Sen. J. Kalani English, Vice Chair

FROM: Hawaii Food Industry Association: Lauren Zirbel, Executive Director

RE: SB 2824 RELATING TO THE DEPOSIT BEVERAGE CONTAINER PROGRAM

Removes the exemption for dietary supplements from the deposit beverage container program.

Chairs & Committee Members:

The Hawaii Food Industry Association respectfully opposes this bill.

The United States Food and Drug Administration 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, soft gels, gel caps, 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. 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.

Mahalo for the opportunity to provide this testimony.



January 31, 2012

The Honorable Mike Gabbard
Chairman, Senate Energy and Environment Committee

RE: SB 2824 – OPPOSE

Dear Chairman Gabbard:

The Grocery Manufacturers Association¹ (GMA) and its more than three hundred members respectfully oppose SB 2824, which would amend the existing beverage deposit law to include dietary supplement beverage containers because these products by definition do not have the same use as other covered products such as juice and soda and their inclusion would be **unnecessarily prejudicial**.

The United States Food and Drug Administration 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.

GROCERY MANUFACTURERS ASSOCIATION

1350 I Street, NW :: Suite 300 :: Washington, DC 20005 :: ph 202-639-5900 :: fx 202-639-5932 ::

www.gmaonline.org



The Association of Food, Beverage
and Consumer Products Companies

In summary, nutritional supplements are federally regulated health products often recommended by doctors or nutritionists and used, for example, as meal replacements to combat obesity and provide nutrients to people with health issues. Their inclusion in the bottle deposit program would be an **inequitable tax assessment** and in some instances the equivalent of charging a redemption fee for the plastic packaging of a meal replacement bar.

For these reasons, GMA respectfully opposes SB 2824.

Sincerely,

A handwritten signature in black ink that reads "John Hewitt".

John Hewitt
Western Region Director
Grocery Manufacturers Association

GROCERY MANUFACTURERS ASSOCIATION

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Sierra Club Hawai'i Chapter

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SENATE COMMITTEE ON WAYS AND MEANS

January 31, 2012, 2:45 P.M.
(Testimony is 2 pages long)

TESTIMONY IN SUPPORT OF SB 2824 WITH PROPOSED AMENDMENTS

Aloha Chair Gabbard and Committee Members -

The Sierra Club, Hawai'i Chapter, *supports* SB 2824, 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.

Further, expanding our beverage container program to include hard spirits and wine bottles is a necessary and logical expansion of our recycling policy. The advance deposit fee of one cent is plainly not working. Millions of bottles and containers are not being recycled (according to numbers provided by the industry, approximately 21,917,760 bottles of wine were sold in Hawaii in 2009).

Assuming Hawaii is within the national average of 25% recycling, approximately 15 million bottles of wine are discarded into our landfills or incinerators each year. But this is a big assumption. 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.

If we want to move Hawaii to a sustainable future and help solve our growing landfill crisis, we need to start taking the “small changes” necessary to eliminate our problems. Including dietary and alcohol containers would be an important start.

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

SENATE COMMITTEE ON ENERGY & ENVIRONMENT

Jan 31, 2012, 2:45 pm
(Testimony is 1 page long)

TESTIMONY IN STRONG SUPPORT OF SB 2824

Aloha Chair Gabbard and Members of the Committee:

I am a graduate student researcher in marine biogeochemistry at the University of Hawaii and I am in strong support of SB 2824. Currently, manufacturers of drinks such as "Red Bull", "Monster", and Rockstar energy drinks, and "vitamin waters" are exempt from the highly successful Beverage Deposit Container Program. Manufacturers of these drinks are using a loophole in the Beverage Deposit Container Program by calling themselves a "nutritional supplement". Therefore, these bottles and cans don't include the 5 cent deposit shown to successfully encourage recycling in Hawaii, nor do they technically need to be accepted at recycling centers. Unfortunately, this means millions of bottles of "vitamin water" and Monster energy drinks go unrecycled, exacerbating the burden on our precious landfill space and environment.

According to the County of Hawaii website, Americans throw away enough aluminum to rebuild our entire commercial fleet of airplanes every three months. And recycling just ONE aluminum can saves enough energy to operate a TV for three hours. By applying the deposit to these trendy drinks that are consumed in a manner similar to soda, it is estimated that roughly an additional \$2,500,000 to \$3,000,000 in new revenue in Hawaii will go into the Deposit Beverage Container Deposit Special Fund. True nutritional supplements such as formula, medical foods, and dairy will remain exempt.

I respectfully request that the committee advance this important measure.

Mahalo for the opportunity to testify.

Joy Leilei Shih

Testimony for ENE 1/31/2012 2:45:00 PM SB2824

Conference room: 225
Testifier position: Support
Testifier will be present: No
Submitted by: Harvey Arkin
Organization: Individual
E-mail: alohaxtc@hawaii.rr.com
Submitted on: 1/31/2012

Comments:

Please support SB 2824 so more bottles and can are recycled. close the loophole!

Thank you,
Harvey Arkin
96822

Testimony for ENE 1/31/2012 2:45:00 PM SB2824

Conference room: 225
Testifier position:
Testifier will be present: No
Submitted by: Evern Williams
Organization: Individual
E-mail: evernw@aol.com
Submitted on: 1/31/2012

Comments:

Please pass this much needed legislation to make companies recycle their waste and not be exempted.

Testimony for ENE 1/31/2012 2:45:00 PM SB2824

Conference room: 225
Testifier position: Support
Testifier will be present: No
Submitted by: Thorne Abbott
Organization: CoastalZone.com
E-mail: Thorneabbott@yahoo.com
Submitted on: 1/31/2012

Comments:

Please don't let Red Bull, Rockstar, Monster energy drinks, and Vitamin Water type drinks have an exemption to the 5 cent Beverage Container Deposit Special Fund. The polluter pays principle allows everyone to pay their fare share for landfill space and disposal costs. No one beverage manufacturer, particularly those from off-island, should be exempt. While this may increase the price of these drinks slightly, it would create equal competition between other drink alternatives. Finally, it would seem that if you have the discretionary funds to spend on enriched water or an energy boost drink to enhance your health, you would have equivalent ability to contribute to protecting and conserving the Island's health. In summary, please require consumers of energy drinks and mineral water to pay the 5 cent recycling fee to compensate for disposal of the drinks container. Thank you for your consideration.

Thorne Abbott

Marguerite Harden
3061 Pualei Circle #301
Honolulu, HI 96815

Members of the Senate Committee on Energy and Environment,

I would like to submit my testimony regarding SB 2824, which closes the loophole in our Deposit Beverage Container (DBC). I believe it is important that all aluminum and appropriate plastic containers, including those associated with drinks such as Red Bull, Vitamin Water, and Monster be a part of our State's successful DBC program. The inclusion of these bottles will result in increased revenue to our State's DBC Special Fund, while also keeping more waste out of our island's limited landfills.

The support for a bill such as this one should be a "no-brainer."

Thank you for your time and consideration.

Aloha,

Marguerite Harden

Testimony for ENE 1/31/2012 2:45:00 PM SB2824

Conference room: 225
Testifier position: Support
Testifier will be present: No
Submitted by: Samuel Chesser
Organization: Individual
E-mail: samuel.chesser@ml.com
Submitted on: 1/31/2012

Comments:

This bill enhances revenues while doing the right thing for our environment. It must pass.

Thank you.

The following two pages were attached to this testimony.

Red Bull & Recycling: Energy In, Energy Out

Red Bull and other energy drinks may get you through the night of cramming or, more likely, the night of partying. But manufacturers are bulling their way out of the recycling system through a loophole in the Beverage Deposit Container Program as a "nutritional supplement". Therefore, these bottles and cans don't include the 5 cent deposit shown to successfully encourage recycling in Hawaii, nor do they technically need to be accepted at recycling centers. Unfortunately, this means millions of bottles of "vitamin water" and Monster energy drinks go unrecycled, exacerbating the burden on our landfill space and environment.

According to the County of Hawaii website, Americans throw away enough aluminum to rebuild our entire commercial fleet of airplanes every three months. And recycling just ONE aluminum can saves enough energy to operate a TV for three hours. By applying the deposit to these trendy drinks that are consumed in a manner similar to soda, it is estimated that roughly an additional \$2,500,000 to \$3,000,000 in new revenue in Hawaii will go into the Deposit Beverage Container Deposit Special Fund. Don't worry, true nutritional supplements such as formula, medical foods, and dairy will remain exempt. Don't let Red Bull, Rockstar, Monster energy drinks, and Vitamin Water use this loophole!

SB2824 (support)

Senate Committee on Energy and Environment

Hearing on Tuesday, January 31 at 2:45 p.m. in conference room 225

Aloha Chair Gabbard, Vice Chair English, and members of the committee,

I support SB2824. The HI-5 program has worked very well since January 1, 2005. Many billions of beverage containers have been recycled and kept out of our landfills. Please don't let manufacturers of such drinks as Red Bull, Monster energy drinks, Rockstar, and vitamin water label their beverages as "nutritional supplements." We should not let these beverage containers go into our landfills. Oahu, for example, is now looking for a new landfill as the LUC might not give the City the 15-year extension on Waimanalo Gulch that it seeks.

Let's get as many beverage containers recycled as possible. Semantics should not have any consideration in this instance. A can or bottle is a can or bottle.

Please pass SB2824. It is a good bill which makes a good program (HI-5) even better. Thank you.

Sincerely,

Randy Ching

Honolulu

oahurandy@yahoo.com