

# **SB 1260**

## Testimony

NEIL ABERCROMBIE  
Governor



RUSSELL S. KOKUBUN  
Chairperson, Board of Agriculture

SCOTT E. ENRIGHT  
Deputy to the Chairperson

State of Hawaii  
DEPARTMENT OF AGRICULTURE  
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TESTIMONY OF RUSSELL S. KOKUBUN  
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE SENATE COMMITTEE ON AGRICULTURE  
THURSDAY, FEBRUARY 7, 2013  
3:05 P.M.  
Conference Room 229

SENATE BILL NO. 1260  
RELATING TO ADVERTISING AND MARKETING

Chairperson Nishihara, Vice Chair Kouchi, and Members of the Committee,

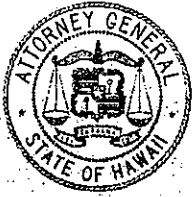
Thank you for the opportunity to testify on Senate Bill No. 1260. This bill amends Chapter 148, Hawaii Revised Statutes, Advertising and Marketing, to add new sections designated as "Beer; brand name", "Beer; name and address of bottler", and "Beer; appellation of origin".

The Department supports portions of the bill but has concerns regarding the creation of new standards that would be difficult to enforce given our current levels of resources and staffing and also creates conflicting standards within existing statutes.

The Department is supportive of the section requiring the name of the bottler and the place where the beer was bottled to be designated on the labels of bottled or canned beer sold or distributed in the State.

However, the Department has concerns with the portion of the bill dealing with appellation of origin. For processed, value-added products, such as beer, origin of the ingredients is difficult to determine because once transformed, through liquification for example, determining the origin of a processed product with ingredients from various sources for the purpose of the enforcement as required by this bill would require additional staff and equipment to be effective.

Thank you for the opportunity to submit testimony.



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-SEVENTH LEGISLATURE, 2013**

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**ON THE FOLLOWING MEASURE:**  
S.B. NO. 1260, RELATING TO ADVERTISING AND MARKETING.

**BEFORE THE:**  
SENATE COMMITTEE ON AGRICULTURE

**DATE:** Thursday, February 7, 2013                      **TIME:** 3:05 p.m.

**LOCATION:** State Capitol, Room 229

**TESTIFIER(S):** David M. Louie, Attorney General, or  
Margaret S. Ahn, Deputy Attorney General

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Chair Nishihara and Members of the Committee:

The Department of the Attorney General provides the following comments regarding constitutional issues in this bill.

This bill regulates the labeling of beer sold or distributed in the State, if “Hawaii,” “Hawaiian,” or “any geographical area within Hawaii,” or “any Hawaiian word or statement, design, symbol, or device” appears on the label that “tends to create the impression that the beer was produced in the place or region other than that of actual production.” This bill further mandates that beer sold or distributed in the State that is labeled with “any Hawaiian brand name or adjective, Hawaiian word or statement, design, or device” shall also be labeled with the name of the bottler and place where the beer was bottled or canned. This bill further prohibits the use of any appellation of origin on a beer label unless at least seventy-five percent of the beer’s volume is derived from fruit or agricultural products grown and fermented in the region, the beer is fully produced and finished within the region, and the beer conforms to the requirements of the region.

First, article III, section 14, of the Hawaii State Constitution provides that each law shall embrace but one subject, which shall be expressed in its title. This bill—Relating to Advertising and Marketing—could be challenged on the grounds that its title does not embrace just one subject.

Second, this bill may also be challenged under the First Amendment and Commerce Clause of the United States Constitution. Product labeling constitutes commercial speech subject to the protections of the First Amendment. Under a First Amendment challenge, the court would

examine whether the labeling the State seeks to regulate is inherently likely to deceive or has in fact been deceptive. If the State is unable to prove this, and the labeling is only “potentially misleading,” then the State would be required to prove that its governmental interest in regulating the labeling is substantial; that the interest is directly advanced by the regulations; and that the regulations are not more extensive than necessary. Bronco Wine Co. v. Jolly, 129 Cal. App. 4th 988, 1004 (2005), *cert. denied*, 546 U.S. 1150 (2006). Furthermore, this burden of proof would not be satisfied by “mere speculation or conjecture.” The State would be required to “demonstrate that the harms it recites are real and that its restrictions will in fact alleviate them to a material degree.” Rubin v. Coors Brewing Co., 514 U.S. 476, 487 (1995) (regulation prohibiting beer labels from displaying alcohol content with the purpose of suppressing strength wars found to be a violation of the First Amendment). This bill lacks any findings and evidence to this end. If such evidence exists, then verifiable references to the evidence that shows the real and substantial harm to the State that will be directly and materially alleviated by these regulations should be inserted into the bill.

As this bill regulates all beer sold or distributed in the State without regard to where it is manufactured, it will affect interstate commerce, and under a Commerce Clause challenge, the court would examine whether the burden on interstate commerce is excessive in relation to the State’s interests that are furthered by the regulations. Bronco Wine Co., 129 Cal. App. 4th at 1022. Again, this bill lacks findings and evidence with respect to how the State’s interests are furthered. Verifiable references to evidence that shows the state interests that would be furthered by these regulations should be inserted into the bill.

Finally, the terms “Hawaiian design, symbol, or device” are vague and should be defined.

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** AGL Testimony  
**Cc:** [g@mauibrewingco.com](mailto:g@mauibrewingco.com)  
**Subject:** Submitted testimony for SB1260 on Feb 7, 2013 15:05PM  
**Date:** Wednesday, February 06, 2013 3:08:49 PM

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**SB1260**

Submitted on: 2/6/2013

Testimony for AGL on Feb 7, 2013 15:05PM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Garrett W. Marrero	Maui Brewing Co.	Support	Yes

Comments: I will be submitting my full testimony this evening and in person tomorrow. We are in strong support of this bill as it protects and promotes true local production.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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**From:** Jayne Kerns  
**To:** AGL Testimony; CPN Testimony  
**Cc:** "Big Island Brewhaus"; "Mike Dahler"; "mike field"; Ma"ata Tukuafu; Daniel Russell; danielrussell01@gmail.com; "Sherrie Austin"; "Susan Arnold"  
**Subject:** Support for SB 1260  
**Date:** Wednesday, February 06, 2013 10:50:45 AM

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Aloha Honorable Legislators,

I am writing in support of SB 1260; a bill that deems to take confusion out of beer industry labeling.

I believe that if a beer is to be considered "Hawaiian" it must actually be brewed and packaged 100% in the State of Hawaii.

A label requiring origin of production and packaging should be required to help preserve the appellation of "Made in Hawaii" and encourage our quality based Hawaiian brewing industry to continue to flourish. Craft beer consumers are discriminating and educated – they read labels and value this information. If "truthful origin labeling" is not required integrity suffers, consumers are misled and denied access to truthful, valuable information about this craft product.

The practice by any brewer, of Hawaiian origin or otherwise, of brewing and/or bottling outside the island, without clearly indicating the actual origin of manufacture on the label, can and does promote confusion for consumers.

Consumers value locally made products for several reasons including:

- quality and freshness
- supporting local businesses, families and jobs

The creating a product locally uses many local resources including but not limited to labor, water, power, shipping, and agriculture. Hawaii island businesses have higher costs and support the State's economy in a broad way.

Companies that create and distribute beer posing as "locally made" - save on the inherently higher costs of island-made production, are not required to pay the same State beer production taxes that a truly locally brewed brewers are required to, and do not support the economy of the State in the same manner a locally brewed beer does – yet they reap the benefits of being perceived as Hawaiian beer.

Please vote to require labeling to clearly state the origin of production and packaging, helping to preserve the appellation of "Made in Hawaii" and support our quality based Hawaiian brewing industry.

Mahalo nui loa your care and consideration,  
Sincerely,  
Jayne Kerns

Jayne Kerns | Associate



deReus Architects

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**From:** [Big Island Brewhaus](#)  
**To:** [AGL Testimony](#); [CPN Testimony](#)  
**Subject:** Support for SB 1260  
**Date:** Wednesday, February 06, 2013 9:43:16 AM

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Aloha Honorable Legislators,

I am writing in support of SB 1260; a bill that deems to take confusion out of the marketplace of beer industry labeling. We feel that if a beer is to be considered "Hawaiian" that it must indeed be brewed and packaged 100% in the State of Hawaii. The common practice of brewing elsewhere by any brewer of Hawaiian origin or otherwise and then labeling said beer without indication of actual origin of manufacture can and does promote confusion to consumers as to its actual origin.

Consumers actually value locally made products for several reasons including: supporting local businesses and families, quality and freshness versus a product made more than 2,000 miles away and then shipped potentially compromising quality or character of a food or agricultural product.

The value of creating a product locally using many local resources including but not limited to water, power, shipping, agriculture, and other related Hawaiian businesses costs more and yet supports the State's economy in a broad way. A company that is allowed to create a product posing as locally made when not in fact made locally can save the inherent higher costs of local production while selling a product that is actually not "Hawaiian" and does not support the economy of the State in the same manner a locally brewed beer does. It is also not required to pay the same State beer production taxes that a locally brewed beer is required to do -- yet its producer can reap the benefits as being



thought of as Hawaiian beer. A label requiring origin of production and packaging should be required to help preserve the appellation of "Made in Hawaii" and encourage a quality based Hawaiian brewing industry to continue to flourish. Craft beer consumers are discriminating enough to want to read the labels for this type of information. If "truthful origin labeling" is not required integrity suffers and consumers will be denied access to truthful, valuable information about the product.

Thank-you very much,  
Sincerely,

**Thomas Kerns**  
**Big Island Brewhaus**  
**64-1066 Mamalahoa Hwy.**  
**Kamuela, Big Island**  
**Hawaii, 96743**  
**BigIslandBrewhaus@Yahoo.com**  
**808-276-3301**



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**To:** [AGL Testimony](#)  
**Cc:** [mendez@hawaii.edu](mailto:mendez@hawaii.edu)  
**Subject:** \*Submitted testimony for SB1260 on Feb 7, 2013 15:05PM\*  
**Date:** Saturday, February 02, 2013 12:20:08 PM

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**SB1260**

Submitted on: 2/2/2013

Testimony for AGL on Feb 7, 2013 15:05PM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Javier Mendez-Alvarez	Individual	Support	No

Comments:

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**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [AGL Testimony](#)  
**Cc:** [danielrussell01@gmail.com](mailto:danielrussell01@gmail.com)  
**Subject:** \*Submitted testimony for SB1260 on Feb 7, 2013 15:05PM\*  
**Date:** Wednesday, February 06, 2013 1:17:59 PM

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**SB1260**

Submitted on: 2/6/2013

Testimony for AGL on Feb 7, 2013 15:05PM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Daniel Russell	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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**From:** [Ma'ata Tukuafu](#)  
**To:** [AGL Testimony](#); [CPN Testimony](#)  
**Subject:** Support for SB 1260  
**Date:** Wednesday, February 06, 2013 11:12:32 AM

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Aloha Honorable Legislators,

I am writing in support of SB 1260; a bill that deems to take confusion out of beer industry labeling. I believe that if a beer is to be considered "Hawaiian" it must actually be brewed and packaged 100% in the State of Hawaii.

A label requiring origin of production and packaging should be required to help preserve the appellation of "Made in Hawaii" and encourage our quality based Hawaiian brewing industry to continue to flourish. Craft beer consumers are discriminating and educated – they read labels and value this information. If "truthful origin labeling" is not required integrity suffers, consumers are misled and denied access to truthful, valuable information about this craft product.

The practice by any brewer, of Hawaiian origin or otherwise, of brewing and/or bottling outside the island, without clearly indicating the actual origin of manufacture on the label, can and does promote confusion for consumers.

Consumers value locally made products for several reasons including:

- quality and freshness
- supporting local businesses, families and jobs

The creating a product locally uses many local resources including but not limited to labor, water, power, shipping, and agriculture. Hawaii island businesses have higher costs and support the State's economy in a broad way.

Companies that create and distribute beer posing as "locally made" - save on the inherently higher costs of island-made production, are not required to pay the same State beer production taxes that a truly locally brewed brewers are required to, and do not support the economy of the State in the same manner a locally brewed beer does – yet they reap the benefits of being perceived as Hawaiian beer.

Please vote to require labeling to clearly state the origin of production and packaging, helping to preserve the appellation of "Made in Hawaii" and support our quality based Hawaiian brewing industry.

Mahalo,  
Ma'ata Tukuafu  
PO Box 993  
Kamuela, HI 96743

**From:** [Dagan Bernstein](#)  
**To:** [AGL Testimony](#)  
**Subject:** SB 1260  
**Date:** Wednesday, February 06, 2013 11:27:07 AM

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I am writing in support of SB 1260; a bill that deems to take confusion out of beer industry labeling. I believe that if a beer is to be considered "Hawaiian" it must actually be brewed and packaged 100% in the State of Hawaii.

A label requiring origin of production and packaging should be required to help preserve the appellation of "Made in Hawaii" and encourage our quality based Hawaiian brewing industry to continue to flourish. Craft beer consumers are discriminating and educated – they read labels and value this information. If "truthful origin labeling" is not required integrity suffers, consumers are misled and denied access to truthful, valuable information about this craft product.

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Please vote to require labeling to clearly state the origin of production and packaging, helping to preserve the appellation of "Made in Hawaii" and support our quality based Hawaiian brewing industry.

Mahalo nui loa your care and consideration,  
Sincerely