

JAN 29 2015

A BILL FOR AN ACT

RELATING TO LABELING REQUIREMENTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the image of Hawaii
2 can be used as a tool to increase brand recognition and market
3 share. Many businesses neither produce nor use products that
4 are made in Hawaii, yet claim their commodities as such, and
5 lead consumers to believe that they are purchasing a "made in
6 Hawaii" or "produced in Hawaii" commodity.

7 The purpose of this Act is to allow the board of
8 agriculture to adopt "made in Hawaii" labeling requirements for
9 all agricultural commodities not already subject to "made in
10 Hawaii" labeling requirements, and to provide a separate
11 standard of labeling requirements for Hawaii-grown cacao.

12 SECTION 2. Chapter 147, Hawaii Revised Statutes, is
13 amended by adding a new section to be appropriately designated
14 and to read as follows:

15 "§147- Agricultural commodities; "made in Hawaii"
16 labeling requirements; penalties. (a) Pursuant to any laws
17 imposing "made in Hawaii" labeling requirements for specific



1 agricultural commodities and rules adopted by the board of
2 agriculture, all retailers, distributors, farmers, producers,
3 and producer-distributors that sell agricultural commodities for
4 purchase or consumption shall be subject to "made in Hawaii"
5 labeling requirements.

6 (b) The board of agriculture shall determine rules
7 pursuant to chapter 91 for "made in Hawaii" labeling no later
8 than July 1, 2016.

9 (c) Violations of this section shall be subject to
10 penalties as provided under section 147-2.

11 (d) For purposes of this section, "made in Hawaii"
12 labeling means written, printed, or graphic matter on or
13 attached to an agricultural commodity or its containers or
14 packaging that uses the phrase "made in Hawaii" or "produced in
15 Hawaii" or that by any other means represents the geographic
16 origin of the agricultural commodity as being from any place
17 within the State."

18 SECTION 3. Chapter 486, Hawaii Revised Statutes, is
19 amended by adding a new section to be appropriately designated
20 and to read as follows:



1 "§486- Hawaii-grown cacao; labeling requirements. (a)

2 In addition to all other labeling requirements, and subject to
3 the approval of the board of agriculture, no identity statement
4 used for labeling or advertising cacao, chocolate, cacao butter,
5 or any other product produced in whole or in part from cacao,
6 shall contain the phrase "Hawaii-grown cacao", or similar
7 language, except for any product that contains:

8 (1) Cacao ingredients made from Hawaii-grown cacao and no
9 other cacao or chocolate flavoring; and

10 (2) A blend of Hawaii-grown cacao and cacao not grown in
11 Hawaii or other natural or artificial cacao flavoring,
12 the per cent cacao by weight of the Hawaii-grown cacao
13 used in the blend, followed by the geographic origin
14 of the weight-specified cacao and the term "Cacao
15 Blend".

16 Each word or character in the identity statement shall be of the
17 same type size and shall be contiguous. The smallest letter or
18 character of the identity statement on packages of sixteen
19 ounces or less net weight shall be at least one and one-half
20 times the type size required under federal law for the statement
21 of net weight or three-sixteenths of an inch in height,



1 whichever is smaller. The smallest letter or character of the
2 identity statement on packages of greater than sixteen ounces
3 net weight shall be at least one and one-half times the type
4 size required under federal law for the statement of net weight.
5 The identity statement shall be conspicuously displayed without
6 any intervening material in a position above the statement of
7 net weight. Upper and lower case letters may be used
8 interchangeably in the identity statement.

9 (b) A listing of the geographic origins of the various
10 Hawaii-grown cacao and the regional origins of the various cacao
11 not grown in Hawaii that are included in a blend may be shown on
12 the label. If used, this list shall consist of the term
13 "Contains:", followed by, in descending order of per cent by
14 weight and separated by commas, the respective geographic origin
15 or regional origin of the various cacaos in the blend that the
16 manufacturer chooses to list. Each geographic origin or
17 regional origin may be preceded by the per cent of cacao by
18 weight represented by that geographic origin or regional origin,
19 expressed as a number followed by the per cent sign. The type
20 size used for this list shall not exceed half that of the



1 identity statement. This list shall appear below the identity
2 statement, if included on the front panel of the label.

3 (c) It shall be a violation of this section to:

4 (1) Use the identity statement specified in subsection (a)
5 or similar terms in labeling or advertising unless the
6 product contains cacao from only one geographic
7 origin;

8 (2) Use a geographic origin in labeling or advertising, if
9 the product contains less than 10 per cent cacao by
10 weight from that geographic origin;

11 (3) Use a geographic origin in advertising a product
12 without disclosing the percentage of cacao used from
13 that geographic origin as described in subsection (a);

14 (4) Misrepresent, on a label or in advertising of a
15 product, the per cent cacao by weight from a
16 geographic origin;

17 (5) Use the term "All Hawaiian" on a label or in
18 advertising of a cacao if the cacao is not produced
19 entirely from cacao produced in geographic origins
20 defined in this chapter;



- 1 (6) Use a geographic origin on the front label panel of a
2 cacao product other than in the trademark or in the
3 identity statement as authorized in subsection (a)
4 unless 100 per cent of the cacao contained in the
5 product is from that geographic origin;
- 6 (7) Use more than one trademark on a package of a product
7 unless 100 per cent of the cacao contained in the
8 product is from that geographic origin specified by
9 the trademark;
- 10 (8) Use a trademark that begins with the name of a
11 geographic origin on a product unless 100 per cent of
12 the cacao contained in the product comes from that
13 geographic origin or the trademark ends with words
14 that indicate a business entity; or
- 15 (9) Print the identity statement required by subsection
16 (a) in a smaller font than that used for a trademark
17 that includes the name of a geographic origin pursuant
18 to paragraph (5) and in a location other than the
19 front label panel of a cacao product.
- 20 (d) Manufacturers and other persons who package cacao
21 products covered by this section shall maintain, for a period of



1 two years, records on the volume and geographic origin or
2 regional origin of cacao purchased and sold and any other
3 records required by the department for the purpose of enforcing
4 this section. Authorized employees of the department shall have
5 access to these records during normal business hours.

6 (e) For the purpose of this section:

7 "Geographic origin" means the geographic regions in which
8 Hawaii-grown cacao are produced; provided that the term
9 "Hawaiian" may be substituted for the geographic origin
10 "Hawaii".

11 "Per cent cacao by weight" means the percentage calculated
12 by dividing the weight in pounds of cacao of one geographic or
13 regional origin used in a production run of the product, by the
14 total weight in pounds of the cacao used in that production run
15 of the product, multiplying the quotient by one hundred."

16 SECTION 4. Section 147-4, Hawaii Revised Statutes, is
17 amended to read as follows:

18 **"§147-4 Rules.** The department may make rules, subject to
19 chapter 91:



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- 1 (1) Defining grades and grade labeling requirements of
2 agricultural commodities and standard containers for
3 packing of particular agricultural commodities;
- 4 (2) Prohibiting the sale, offering for sale, or
5 transportation of agricultural commodities unless
6 packed in standard containers and labeled with the
7 appropriate grade or offgrade designation; provided
8 that this prohibition shall not apply to the sale,
9 offering for sale, or transportation to a plant for
10 grading, packing, or processing, or transportation to
11 a warehouse for storage;
- 12 (3) Prohibiting the use of grade terms or abbreviations of
13 grade terms on agricultural commodities for which no
14 grades have been established under this part;
- 15 (4) Defining "suitable shipping condition" for
16 agricultural commodities which are to be shipped for
17 sale from one island to another within the State or to
18 points outside the State, and prohibiting such
19 shipment for sale of agricultural commodities which do
20 not meet the minimum standards set for "suitable
21 shipping condition";



- 1 (5) Prescribing records to be kept in connection with
- 2 purchases of agricultural commodities by persons,
- 3 other than produce dealers purchasing from a producer
- 4 or producers, for purposes of resale five or more tons
- 5 of agricultural commodities during any one calendar
- 6 month;
- 7 (6) Prescribing records to be kept by produce dealers in
- 8 connection with the purchase, sale, transport for
- 9 sale, solicitation, or negotiation of sale with
- 10 respect to an agricultural commodity; [~~and~~]
- 11 (7) Relating to the inspection and documentation of the
- 12 geographic origin of Hawaii-grown green coffee
- 13 beans[-]; and
- 14 (8) Relating to the labeling requirements for "made in
- 15 Hawaii" agricultural commodities.

16 In making the rules the department shall take into account,

17 among other things, the factors of maturity, condition,

18 soundness, color, shape, size, and freedom from defects of the

19 agricultural commodity in question and shall also take into

20 consideration the official standards, grades or classifications



1 adopted by the secretary of the Department of Agriculture of the
2 United States, commonly known as U.S. Grades."

3 SECTION 5. Section 147-22, Hawaii Revised Statutes, is
4 amended to read as follows:

5 **"§147-22 Rules.** The department shall have the necessary
6 powers to carry out and effectuate the purposes of this part,
7 including the following:

8 To establish, prescribe, modify, or alter, by rules, such
9 grades, standards, grade labels, "made in Hawaii" labeling
10 requirements, and classifications as shall be the minimum
11 requirements for fresh and processed agricultural commodities
12 destined for shipment by commercial exporters to points outside
13 the State; provided that the provisions of such grades,
14 standards, grade labels, "made in Hawaii" labeling requirements,
15 and classifications shall not excuse failure to comply with the
16 provisions of the federal and state food, drug, and cosmetic
17 acts. The department in establishing such rules shall consult
18 with appropriate state and federal agencies and with any
19 appropriate industry or trade organization. The standards,
20 grades, grade labels, "made in Hawaii" labeling requirements,
21 and classifications so established shall be on the basis of what



1 the department may deem best suited to the agricultural,
2 horticultural, or other interests of the State; provided that
3 the minimum requirements for the grades, standards, grade
4 labels, "made in Hawaii" labeling requirements, and
5 classifications so established for processed agricultural
6 commodities shall not be higher than that of any standardized
7 product which is sanitary and which has been demonstrated to be
8 a commercially-acceptable product of the class to which it
9 belongs and for which a market has been established; provided
10 further that different minimum requirements may be applied to
11 different styles of processed agricultural commodities; and
12 provided further that any processed pineapple product, in which
13 the fruit ingredient is at least ninety-five per cent pineapple
14 in compliance with the provisions of the federal and state food,
15 drug, and cosmetic acts, may be exported from the State."

16 SECTION 6. Section 486-119, Hawaii Revised Statutes, is
17 amended to read as follows:

18 **"§486-119 Hawaii-made products; Hawaii-processed products.**

19 (a) No person shall keep, offer, display or expose for sale, or
20 solicit for the sale of any item, product, souvenir, or any
21 other merchandise that is labeled "made in Hawaii" or that by



1 any other means misrepresents the origin of the item as being
2 from any place within the State, or uses the phrase "made in
3 Hawaii" as an advertising or media tool for any craft item that
4 has not been manufactured, assembled, fabricated, or produced
5 within the State and that has not had at least fifty-one per
6 cent of its wholesale value added by manufacture, assembly,
7 fabrication, or production within the State.

8 (b) Subsection (a) notwithstanding, no person shall keep,
9 offer, display, expose for sale, or solicit the sale of any
10 perishable consumer commodity that is labeled "made in Hawaii",
11 "produced in Hawaii", or "processed in Hawaii" or that by any
12 other means represents the origin of the perishable consumer
13 commodity as being from any place within the State, or use the
14 phrase "made in Hawaii", "produced in Hawaii", or "processed in
15 Hawaii" as an advertising or media tool for any perishable
16 consumer commodity, unless the perishable consumer commodity is
17 wholly or partially manufactured, processed, or produced within
18 the State from raw materials that originate from inside or
19 outside the State and at least fifty-one per cent of the
20 wholesale value of the perishable consumer commodity is added by
21 manufacture, processing, or production within the State.



1 (c) This section shall not apply to the "made in Hawaii"
 2 labeling requirements of agricultural commodities determined by
 3 the board through rules adopted pursuant to section 147- ."

4 SECTION 7. There is appropriated out of the general
 5 revenues of the State of Hawaii the sum of \$ or so
 6 much thereof as may be necessary for fiscal year 2015-2016 for
 7 the board of agriculture to create "made in Hawaii" labeling
 8 requirements, through rules, for agricultural commodities in
 9 Hawaii.

10 The sum appropriated shall be expended by the department of
 11 agriculture for the purposes of this Act.

12 SECTION 8. This Act does not affect rights and duties that
 13 matured, penalties that were incurred, and proceedings that were
 14 begun before its effective date.

15 SECTION 9. Statutory material to be repealed is bracketed
 16 and stricken. New statutory material is underscored.

17 SECTION 10. This Act shall take effect on July 1, 2015.

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INTRODUCED BY:

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S.B. NO. 1294

Report Title:

Department of Agriculture; Board of Agriculture; Agricultural Commodities; "Made in Hawaii" Labeling Requirements; Cacao

Description:

Requires the board of agriculture to adopt "made in Hawaii" labeling requirements for agricultural commodities and provides labeling requirements for Hawaii-grown cacao.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

