

**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2024**

ON THE FOLLOWING MEASURE:

H.B. NO. 2773, H.D. 1, RELATING TO AGRICULTURAL PRODUCT LABELING.

BEFORE THE:

HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

DATE: Tuesday, February 27, 2024 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 329 and Videoconference

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Travis T. Moon or Bryan C. Yee, Deputy Attorneys General

Chair Nakashima and Members of the Committee:

The Department of the Attorney General respectfully submits comments regarding this bill.

This bill proposes to amend chapter 486, Hawaii Revised Statutes, by requiring country or region of origin labeling requirements for all honey, processed macadamia nuts, coffee, tea, chocolate, vanilla, sea salt, and any other plant or animal product grown, packaged or sold in Hawaii that contains any information or name indicating "Hawaii," "Hawaiian," or any region of Hawaii, and where the product is less than one hundred percent grown in Hawaii.

The bill could be subject to a constitutional challenge under the U.S. Constitution's dormant Commerce Clause, which authorizes the federal government to regulate commerce and exclude undue state interference, thereby precluding state laws that impermissibly burden interstate commerce. The Supreme Court has held that a state law violates the dormant Commerce Clause if it mandates "differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter." See Granholm vs. Heald, 544 U.S. 460, 472 (2005) (citing Oregon Waste Sys., Inc. v. Dep't of Env't Quality of Ore., 511 U.S. 93, 99 (1994)). A "discriminatory [state] law is virtually per se invalid, and will survive only if it advances a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory

alternatives[.]” Dep't of Revenue of Ky. v. Davis, 553 U.S. 328, 338-39 (2008) (internal quotation marks and citations omitted).

It is not clear what legitimate state purpose is served by requiring country of origin labeling on all honey, processed macadamia nuts, coffee, tea, chocolate, vanilla, sea salt, and any other plant or animal product grown, packaged or sold in Hawaii that contains any information or name indicating “Hawaii,” “Hawaiian,” or any region of Hawaii, and contains less than one hundred percent grown in Hawaii. We recommend providing an explanation on how the bill advances a legitimate state purpose (i.e. health, safety, and general welfare) that cannot be adequately served by a reasonable nondiscriminatory alternative, and to narrow the burden on interstate commerce by, for example, limiting the requirement to such commodities whose labels indicate the commodity was grown, harvested, or raised in Hawaii.

Thank you for the opportunity to provide this testimony.

JOSH GREEN, M.D.
Governor

SYLVIA LUKE
Lt. Governor



SHARON HURD
Chairperson, Board of Agriculture

DEXTER KISHIDA
Deputy to the Chairperson

State of Hawai'i
DEPARTMENT OF AGRICULTURE
KA 'OIHANA MAHI'AI
1428 South King Street
Honolulu, Hawai'i 96814-2512
Phone: (808) 973-9600 FAX: (808) 973-9613

TESTIMONY OF SHARON HURD
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

TUESDAY, FEBRUARY 27, 2024
2:00 PM
CONFERENCE ROOM 329

HOUSE BILL NO. 2773, HD1
RELATING TO AGRICULTURAL PRODUCT LABELING

Chair Nakashima, Vice Chair Sayama, and Members of the Committee:

Thank you for the opportunity to testify on House Bill No.2773, HD1. This bill establishes certain standards for agricultural products labeled as being Hawaiian or from Hawaii. The Department of Agriculture offers comments.

The intent of the bill is to set minimum standards for labeling of agricultural products grown and produced in Hawaii. Of the varied products mentioned in the bill some have individual statutes with labeling rules and requirements that may supersede this bill. Coffee and Macadamia nuts for instance are governed by HRS 486-120.6 and HRS 120.5 respectively. The bill may be too broad in its scope of trying to incorporate all agricultural products not including spices. For products like chocolate bars that use Hawaiian grown Cacao will be under 75% by weight and will have other ingredients such as milk and sugar that exceeds the 25% allowed for production since these are imported.

A minimum font size of 1/16 inch is the quantity statement size so the font size should be the same as the minimum size for the front font. We support the statement

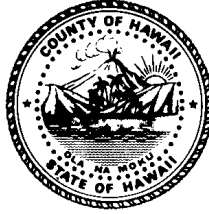


that nothing on the side or back labels of any product subject to this section shall be inconsistent with statements appearing on the front label.

There is also no appropriation in this bill for inspection and enforcement personnel that would be needed to increase inspections necessary to make sure of compliance at manufacturers, packagers and retailers. It would be an impossible task to attempt with the current staff. We would respectfully ask you to support funding a dedicated position at the SR-22 level, beginning salary of \$63,000 to enforce this law which will help rebuild the Department of Agriculture packaging and labeling enforcement capability that was eliminated in 2010.

Thank you for the opportunity to testify on this measure.

Dr. Holeka Goro Inaba
Council Member, District 8, N. Kona



Office: (808) 323-4280
Email: holeka.inaba@hawaiicounty.gov

HAWAI'I COUNTY COUNCIL

County of Hawai'i
West Hawai'i Civic Center, Bldg. A
74-5044 Ane Keohokalole Hwy.
Kailua-Kona, Hawai'i 96740

February 23, 2024

COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Rep. Mark M. Nakashima, Chair
Rep. Jackson D. Sayama, Vice Chair

Re: Support for HB2773 Relating to Consumer Protection
Hearing: February 27, 2024 at 2:00 p.m.

Aloha,

Thank you for allowing me to express strong support for this measure that would bring fair labeling requirements to a broad range of products that would include coffee, tea, macnuts, honey, chocolate, and more.

This bill would also replace representatives from the sugar and pineapple industries with representatives of the coffee and diversified agriculture industries on the Advisory Committee on Pesticides.

The passing of this bill would be a major benefit to Hawai'i farmers and producers.

Sincerely,

DR. HOLEKA GORO INABA, Council Member
District 8, North Kona

HB-2773-HD-1

Submitted on: 2/23/2024 3:20:25 PM

Testimony for CPC on 2/27/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
bruce corker	Rancho Aloha Coffee Farm	Support	Written Testimony Only

Comments:

Dear Chair Nakashima, and Members of the CPC Committee:

I am a coffee and avocado farmer in the Kona region of Hawaii Island and strongly support the enactment of HB2773--and I thank Rep. Kahaloa for its introduction.

As shown by the more than \$41 million in settlement payments made by defendants in the recent class action lawsuit brought by Kona farmers alleging fraudulent labeling of coffee, the mislabeling of Hawaii's specialty agricultural products is all too common. See, for example the 2022 SF Chronicle article entitled "How US Businesses Are Cashing In On The Made in Hawaii Label". <https://www.sfgate.com/hawaii/article/hawaii-products-not-from-islands-17312415.php>

Hawaii needs to actively provide the protection for its fafarmers that other states provide to theirs--for example, **Idaho** for its potato farmers; **Vermont** for its maple syrup producers; **Georgia** for its Vidalia Onion farmers; **California** for its wine grape growers.

Please support Hawaii farmers (and support consumers) by passing this bill.

Thank you,

Bruce Corker, Rancho Aloha, Holualoa

HB-2773-HD-1

Submitted on: 2/25/2024 11:36:15 AM

Testimony for CPC on 2/27/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Colehour Bondera	Kanalani Ohana Farm	Support	Written Testimony Only

Comments:

Aloha Chair and Committee Members:

Please accept this as strong support for HB2773.

As a small-scale diversified farmer in south Kona, it has been for decades that our farm has expected and sought support from the state of Hawaii to be the lead in protecting the use of the word/name "Hawaii" (etc.) on products.

Frankly, consumer deception is a huge factor for in consumers making choices. Misleading lables on products mean that most consumers believe that products are from Hawaii if they carry that in their name or description.

The misleading aspects which have been allowed where undo value is associated with value added from labor in Hawaii in packaging as a means to justify using non-Hawaiian ingredients in products and never revealing that in the packaging (therefore deceiving consumers about the content) has long had direct effect on Hawaii farmers who produce those same products.

One excellent example which can and should make sense is imported macadamia nuts being sold as Hawaiian because of where they were packaged. Worse, however is if Hawaii grown macadamia nuts are coated with non-Hawaiian, imported chocolate, and the packaging lists the product as Hawaiian, when no Hawaii chocolate farmers were supported at all, and instead imported chocolate (from quite long distances for travel) is applied in Hawaii and therefor listed only as value added. The benefits to all farmers are not shared, becasue the exisiting laws allow for the product to be deceptively labeled as "Hawaiian", though the percentage is significantly not.

The need for straight forward product labels means that consumers know what they are choosing to purchase, and that the income/profit is spread among producers. Hawaii can and would therefore better support Hawaii farmers and together we can all be marketing our products honestly and clearly to consumers from Hawaii and around the world.

Please support this legislation so that coffee, cacao, macadamia nuts, honey, and other propduts are all truthfully packaged and marketed, so that Hawaii farmers are best supported through truth in lables which affect all of us...

Sincerely,

Colehour Bondera

KANALANI OHANA FARM

colemel2@gmail.com



P.O. Box 253, Kunia, Hawai'i 96759
Phone: (808) 848-2074; Fax: (808) 848-1921
e-mail info@hfbf.org; www.hfbf.org

February 27, 2024

HEARING BEFORE THE
HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

TESTIMONY ON HB 2773, HD1
RELATING TO AGRICULTURAL PRODUCT LABELING

Conference Room 329 & Videoconference
2:00 PM

Aloha Chair Nakashima, Vice-Chair Sayama, and Members of the Committee:

I am Brian Miyamoto, Executive Director of the Hawai'i Farm Bureau (HFB). Organized since 1948, the HFB is comprised of 1,800 farm family members statewide and serves as Hawai'i's voice of agriculture to protect, advocate and advance the social, economic, and educational interests of our diverse agricultural community.

The Hawai'i Farm Bureau supports the intent of HB 2773, HD1, which establishes certain standards for agricultural products labeled as being Hawaiian or from Hawai'i.

HFB believes it critical to defend the degradation of the Hawai'i brand and the brands of geographic origins within Hawai'i for agricultural products. We understand the concern that because farmers' market vendors, grocery stores, and other retail markets are not currently required to disclose a product's geographic origin, some consumers might be misled into assuming that the products they are buying are all locally grown or produced.

The Hawai'i brand promotes products made in the state but also helps promote locally grown and produced agricultural products which is important to Hawai'i's manufacturing industry and helps support and showcase Hawai'i's agricultural industry.

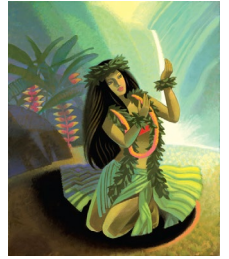
We have concerns with the requirement that a blended plant or animal product labeled with the words "Hawai'i" or "Hawaiian" contain at least seventy-five percent of the named region's agricultural or animal product. Many value-added products utilize locally-grown products, however, many times the featured locally-grown product is not the main product by percentage. For example, the lilikoi in lilikoi butter makes up roughly 25-30% of the total ingredients. Although banana is the featured product in banana bread, the other ingredients make up more than 50% of the banana bread. Even some of the local chocolates wouldn't be allowed because the cacao percentage in the chocolate may be less than 50% (sugar, cocoa butter, cocoa liquor, and (sometimes) vanilla).

The requirement that blended products contain at least seventy-five percent Hawai'i-grown content is much more difficult because of the closing of our last sugar plantation in 2016 and the lack of local dairies. Many value-added products use sugar, milk, and butter as major ingredients and no longer have access to local sugar or milk.

Thank you for the opportunity to comment on this measure.

HAWAII COFFEE COMPANY™

1555 Kalani Street
Honolulu, Hawaii 96817
Ph: 808-847-3600
Fax: 808-847-7900
www.hicoffeeco.com



TO: Representative Mark Nakashima, Chair
Representative Jackson Sayama, Vice Chair
Committee on Consumer Protection & Commerce

FROM: Gerard Bastiaanse
President- Hawaii Coffee Company

RE: **HB 2773 HD1 Relating to Agricultural Product Labeling – Opposition**
Tuesday, February 27, 2024; 2:00 P.M.; Conference Room 329

Aloha Chair Nakashima, Vice Chair Sayama and members of the committee:

Hawaii Coffee Company has concerns with HB 2773 HD1 as written, which amends HRS Chapter 486 by adding a new section to include guidelines for agricultural product branding labeled as being Hawaiian or from Hawaii.

Our company complies with the FDA’s strict food labeling laws, as well as Hawai‘i state labeling regulations. False labeling of Hawai‘i coffee products and other made in Hawai‘i products is a serious matter that harms both consumers, businesses, and industries in Hawai‘i. While Hawaii Coffee Company supports the *intent* of HB 2773 HD1, it *must oppose* HB 2773 HD1 as currently written due to numerous legal and policy concerns, including that the bill in its current form:

1. Is likely to be found void, at least in part, for vagueness.
2. Arbitrarily requires 75% of a named region’s agricultural product in order to include the named region in a product’s front label.
3. May violate the dormant Commerce Clause.
4. Conflicts with the rights of federally registered trademarks under the Lanham Act.
5. Is unduly burdensome and not commercially reasonable.
6. Supersedes the labeling requirements of HRS § 486-119 regarding Hawai‘i-made products, displacing clear existing requirements with vague and arbitrary language.

First, in part, HB 2773 HD1 proposes to add labeling requirements for agricultural products containing some but less than 100% Hawai‘i grown product, including “all honey, processed macadamia nuts, coffee, tea, chocolate, vanilla, sea salt, *and any other plant or animal product* grown, packaged, or sold in Hawaii for which *any information or name indicating* ‘Hawai‘i, Hawaiian, or any region of Hawaii, with or without Hawaiian okina, and where the product is less than one hundred per cent grown in Hawaii[.]” The phrases “any other plant or animal product”, “any information”, and “indicating” are vague and ambiguous, and not defined in the statute. For example, it is unclear whether a photograph depicting a place in Hawai‘i, such as a photograph of Diamond Head, could be construed as “any information” “indicating” “Hawai‘i”.

Under the circumstances, HB 2773 HD1 as written is likely to be found void for vagueness because it fails to give notice that will allow people a reasonable opportunity to understand what it prohibits so they may act accordingly; and fails to provide clear standards for enforcement of the law. As a result, the bill as written can enable and even encourage arbitrary and discriminatory enforcement.

Second, in part, HB 2773 HD1 requires blended Hawai‘i products labeled with the words “Hawai‘i” “Hawaiian” or the name of any Hawaiian region, shall include a minimum of 75% of that named region’s agricultural or animal product in order to feature the regional name on the product’s front label. This is an arbitrary and overbroad requirement that is likely to have unintended consequences. For example, a product named “Kaua‘i saltines” consisting of crackers made of flour from out of state seasoned with salt grown in Kaua‘i, which salt comprises less than 5% of the total product ingredients but is the ingredient that gives the product its defining taste and is the dominant feature of the product, would be prohibited from using the Kaua‘i regional name on the product front label. This would produce an absurd result.

Third, as written, HB 2773 HD1 may violate the dormant commerce clause to the extent it discriminates against interstate commerce in favor of in-state commerce; and imposes a burden on interstate commerce that is excessive relative to the putative benefits as there has been no demonstration that the intent of HB 2773 HD1 cannot be served by reasonable nondiscriminatory alternatives, especially where a number of false labeling/counterfeiting laws already exist, such as HRS § 486-120.6 (coffee), HRS § 486.120.5 (macadamia nuts), and HRS § 486-119 (Hawai‘i made products).

Fourth, as written, HB 2773 HD1 would prohibit the use of federally registered trademarks that incorporate geographic designations of origin (such as Hawai‘i, Kona, or Ka‘u) in conjunction with coffee products that contain less than 75% coffee from the designated regions may be preempted and rendered unenforceable to the extent it conflicts with the Lanham Act, and potentially lead to lawsuits challenging the validity of HB 2773 HD1.¹

Fifth, as written, HB 2773 HD1 is unduly burdensome and not commercially reasonable because it does not have any phase-in over time provisions to allow vendors to come into compliance. HB 2773 HD1 would impact many companies and require significant economic investment to modify packaging (e.g., complete redesign or, at minimum, placement of label stickers over existing packaging). The expense of redesigning product packaging to comply with HB 2773 HD1 would apply broadly given the overbroad and vague nature of HB 2773 HD1 as written.

It will be impossible to retrieve *all* products already being offered for sale or in the possession/control/ownership of third-parties and imposing the requirements of HB 2773 HD1, without any phase-in over time provisions, is not commercially reasonable. The concerns

¹ A trademark can be any word, phrase, symbol, design, or a combination of these things that identifies the source of goods or services. Hawaii Coffee Company is the owner of a number of well-known and widely recognized federal and state trademarks (“HCC Marks”). Hawaii Coffee Company has spent significant time, energy, and expense promoting the HCC Marks and the HCC Marks have accrued considerable value and goodwill to Hawaii Coffee Company. Hawaii Coffee Company’s claims of ownership in the HCC Marks are based upon long existing and clearly delineated common law and statutory rights. These rights constitute legally protectable property.

regarding having adequate time to come into compliance are magnified here where HB 2773 HD1 is vague as written and fails to provide ordinary people a reasonable opportunity to understand what it prohibits so they may act accordingly.

Sixth, HB 2773 HD1 supersedes the labeling requirements of HRS § 486-119 regarding Hawai'i-made products, displacing clear existing requirements with vague and arbitrary language.

For these reasons, we respectfully ask you to hold this measure. Thank you for the opportunity to submit testimony.

HB-2773-HD-1

Submitted on: 2/26/2024 10:21:26 AM

Testimony for CPC on 2/27/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Jennifer Johansen	Cyanotech Corporation	Support	Written Testimony Only

Comments:

Cyanotech Corporation supports turth in labeling for Hawaii grown coffee to protect the reputation of Hawaii-grown coffees as premier, to protect the Hawaii Brand, and to protect consumers from purchasing misleading coffee blends.

As a grower of microalgae for dietary supplements on the island of Hawaii, we are proud of and know the value of labeling and advertising Hawaii grown products. We are a publicly held company, which employs approximately 85 people, and generates close to \$25 million in annual revenue. Part of our success comes from the fact that we are located in a unique geographical region that enables us to grow high quality products. Competitors that falsely claim Hawaii origin are not only misleading consumers but minimizing the consumer’s experience of products made from the region and degrading the reputation of Hawaii grown products.

We strongly support HB2773. Thank you for your time and consideration.

Testimony of Jeffrey Clark

Hamakua Macadamia Nut Company/ Ka'u Coffee Mill

February 27, 2024

RE: 2773 HB RELATING TO AGRICULTURAL PRODUCT LABELING.

Aloha Chair Nakashima, Vice-Chair Sayama, and Members of the Committee on Consumer Protection and Commerce,

My name is Jeffrey Clark and I am the Chief Operating Officer and President of Hamakua Macadamia Nut Company, a processor and farmer of Hawai'i -grown macadamia nuts on the Big Island. I am writing to you in **SUPPORT** of House Bill 2773 HB RELATING TO AGRICULTURAL PRODUCT LABELING.

Hawai'i's macadamia nut farmers have faced some of the most difficult times our industry has seen in the past few years. USDA NASS reported utilized production of Hawai'i macadamia nuts fell by 29 percent from 52.9 million pounds in 2021 to 37.7 million pounds in 2022. Farmgate prices also fell to the lowest price since 2015 to an average of \$0.88/lb. The total take-home value for macadamia nut farmers fell by 49%, wiping out nearly half of Hawai'i's macadamia nut market value.

My organization also owns Ka'u Coffee Mill which grows and processes 100% Hawai'i grown coffee. The coffee industry faces the same issues that the macadamia nut industry is facing. I support this bill because I see the damage caused by foreign grown crops that are brought into Hawaii and deceptively marketing as having been grown in Hawai'i. All Hawai'i-grown crops should have the same protections from mislabeled products.

One of the greatest threats to the viability of farming in Hawai'i is the misleading labeling of products. HB2773 requires country of origin to be included on the label of a consumer package of products marketed as Hawai'i grown. This legislation ensures the authenticity of Hawai'i's products and gives consumers and retailers important information on the origin of those products.

Thank you for taking the time to consider this bill and my testimony.

Mahalo,



Jeffrey Clark

Chief Operating Officer

Hamakua Macadamia Nut Company

Ka'u Coffee Mill



February 26, 2024

RE: HB 2773 HD1 Relating to Agricultural Product Labeling

Dear Chair Nakashima, Vice Chair Sayama, and the House Committee on Consumer Protection and Commerce,

The Kona-Kohala Chamber of Commerce **supports** HB 2773 HD1 Relating to Agricultural Product Labeling.

Founded in 1968, the Kona-Kohala Chamber of Commerce works to enhance the quality of life for our community through a strong, sustainable economy on Hawai'i Island. With 470 member businesses and organizations, our mission is to provide leadership and advocacy for a successful business environment in West Hawai'i.

House Bill 2773 HD1 establishes certain standards for agricultural products labeled as being Hawaiian or from Hawai'i.

The Kona-Kohala Chamber supports initiatives that promote, protect, and provide for the local agriculture industry. Products such as coffee, macadamia nuts, sea salt, and honey are produced in the Kona and Kohala districts. We believe that protecting Hawai'i's brand of agricultural products is vital to the success of our local economy.

We ask legislators to pass HB 2773 HD1 Relating to Agricultural Product Labeling.

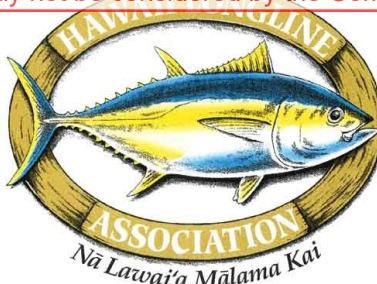
Mahalo for this opportunity to testify.

Sincerely,

A handwritten signature in black ink that reads "Wendy J. Laros". The signature is fluid and cursive, written in a professional style.

Wendy J. Laros, President and CEO
Kona-Kohala Chamber of Commerce

LATE



**Testimony of Eric Kingma, Ph.D.
Executive Director
Hawaii Longline Association**

**Before the House Committee on Consumer Protection and Commerce
February 27, 2024
2:00 p.m.**

**House Bill 2773 HD1
Relating to Agricultural Product Labeling**

Testimony in Support – Suggested Amendments

Chair Nakashima, Vice Chair Sayama, and Members of the Committee:

On behalf of the Hawaii Longline Association (HLA), thank you for the opportunity to provide testimony on HB 2773 HD1 – Relating to Agricultural Product Labeling. HLA supports HB 2773 HD1 and requests the committee consider adding “processed ahi” to the list of products subject to this bill. It is long overdue that Hawaii seafood consumers are provided accurate origin information on ahi poke products sold at local retail establishments.

Most of the ahi poke sold by Hawaii retailers is foreign imported, previously frozen, and treated with carbon monoxide to preserve color, but not freshness. No Hawaii caught ahi sold as poke in Hawaii is gas treated. Major retailers even go as far saying “locally made” or “freshly made” on the label in the display case. Please see the pictures below showing these misleading marketing tactics.



Figure 1: Pictures of processed ahi in retail establishment

Left: Foreign imported, previously frozen, gassed treated “locally made”

Right: Locally caught, ice chilled fresh, not gas treated “locally made”

Based on comments provided by the State Attorney General's office on HB 2773, the House Committee on Agriculture and Food Systems amended this bill to include term "processed macadamia nuts." The term "processed ahi" is essentially identically situated to "processed macadamia nuts," and the justification the AG gave regarding why country of origin labeling with respect to "processed macadamia nuts" is not preempted applies equally to "processed ahi" poke.

Like famers, ranchers, and other food producers operating in the State of Hawaii, we have and are facing unprecedented poor market conditions over the last several years. Foreign seafood imports undercut Hawaii landed fish and other seafood products in local and US mainland markets. Often the imported seafood is caught by vessels with very little monitoring or environmental regulations and their operations and transportation of the seafood into the US markets are subsidized by their national governments.

Like the other commodities listed in the bill, HLA is not suggesting to ban imported, gas-treated processed ahi poke from retail markets, but rather, required retailers to accurately label where the fish was landed if using the terms "Hawaii" "Hawaiian", "locally made, "freshly made" and similar derivatives.

Mahalo for the opportunity to comment on this bill.

About HLA

Established in 2000, HLA represents the Hawaii-based longline fleet and associated seafood businesses. The Hawaii longline fishery — which started in Hawaii in 1917 and is now comprised of 150 locally owned active vessels — is the largest food producer in the State of Hawaii. The Hawaii longline fleet is federally managed, comprehensively regulated and highly monitored. The fishery is also independently certified as sustainable by the Marine Stewardship Council. For more information, visit: hawaiilongline.org

Background on USDA Country of Origin Requirements

A 2002 amendment to the Agricultural Marketing Act requires retailers to notify their customers of the country of origin of covered commodities. The statute provides "[e]xcept as provided in subsection (b), a retailer of a covered commodity shall inform consumers, at the final point of sale of the covered commodity to consumers, of the country of origin of the covered commodity." 7 U.S.C. § 1638a(a)(1). Subsection (b) exempts "food service establishments" from the requirement of (a), which are defined as "a restaurant, cafeteria, lunch room, food stand, saloon, tavern, bar, lounge, or other similar facility operated as an enterprise engaged in the business of selling food to the public." 7 U.S.C. § 1638(3).

"Wild fish" and "farm-raised fish" are "covered commodities" under the statute. "Wild fish" is defined as "naturally-born or hatchery-raised fish and shellfish harvested in the wild," and the term "includes a fillet, steak, nugget, and any other flesh from wild fish or shellfish." 7 U.S.C. § 1638(7)(B)–(C).

("Macadamia nuts" are also a covered commodity. 7 U.S.C. § 1638(1)(A)(iv).

As to labeling requirements for wild fish, the statute provides:

(3) Designation of country of origin for fish

(A) In general

A retailer of a covered commodity that is farm-raised fish or wild fish may designate the covered commodity as having a United States country of origin only if the covered commodity—

(i) in the case of farm-raised fish, is hatched, raised, harvested, and processed in the United States; and

(ii) in the case of wild fish, is—

a. harvested in the United States, a territory of the United States, or a State, or by a vessel that is documented under chapter 121 of Title 46 or registered in the United States; and

b. processed in the United States, a territory of the United States, or a State, including the waters thereof, or aboard a vessel that is documented under chapter 121 of Title 46 or registered in the United States.

(B) Designation of wild fish and farm-raised fish

The notice of country of origin for wild fish and farm-raised fish shall distinguish between wild fish and farm-raised fish.

7 U.S.C. § 1638a.

The statute and regulations exempt a covered commodity from country of origin labeling “if it is an ingredient in a processed food item as defined in 7 C.F.R. 60.119.” It provides that, “[p]rocessed food item’ means a retail item derived from fish or shellfish that has undergone specific processing resulting in a change in the character of the covered commodity, or that has been combined with at least one other covered commodity or other substantive food component (e.g., breeding, tomato sauce), except that the addition of a component (such as water, salt, or sugar) that enhances or represents a further step in the preparation of the product for consumption, would not in itself result in a processed food item.”

LATE



House Committee on Consumer Protection & Commerce

Hawai'i Alliance for Progressive Action (HAPA) Supports: HB2773 HD1

Tuesday, February 27, 2024 2:00pm Conference Room 329

Aloha Chair Nakashima, Vice Chair Sayama and Members of the Committee,

We support HB2773 HD1 which establishes certain standards for agricultural products labeled as being Hawaiian or from Hawai'i.

HAPA understands the importance of enforcing the integrity of the "Hawai'i Brand" and that there is a genuine need for stronger protections of this brand integrity.¹

This bill closes an important loophole where counterfeiters have been escaping oversight. By granting HDOA the ability to verify the authenticity of a roasted coffee's origin, it opens the door for better enforcement and higher profits to farmers. The less counterfeit coffee in the marketplace, the greater the demand for real Hawaiian coffee.

We support establishing these standards for agricultural products that are Hawaiian or from Hawai'i.

Please support HB2773 HD1.

Thank you for your consideration.

Respectfully,

A handwritten signature in black ink, appearing to read 'Anne Frederick', is written over a horizontal line.

Anne Frederick
Executive Director

¹ <https://www.sfgate.com/hawaii/article/hawaii-products-not-from-islands-17312415.php>

HB-2773-HD-1

Submitted on: 2/23/2024 6:00:30 AM

Testimony for CPC on 2/27/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Glen Kagamida	Individual	Support	Written Testimony Only

Comments:

Good idea and long overdue.

Mahalo,

Glen Kagamida

Hilo

HB-2773-HD-1

Submitted on: 2/23/2024 3:05:39 PM

Testimony for CPC on 2/27/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Franz Weber	Individual	Support	Written Testimony Only

Comments:

I support this bill, which is protecting regional names, supporting local agriculture

HB-2773-HD-1

Submitted on: 2/25/2024 11:35:08 PM

Testimony for CPC on 2/27/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Cynthia Maryanoff	Individual	Support	Written Testimony Only

Comments:

Testimony in strong support of HB2773

Dear Representatives

I submit this written testimony **in STRONG SUPPORT HB 2773.**

Our entire family are Kona coffee farmers. We have two working Kona coffee farms [Honalo Farm and Cynthiana Farm]. **We produce KONA typica coffee, an heirloom variety of *Coffea arabica*, a long-established and traditional coffee of Hawai'i.**

Please note that agricultural products from all over the world are, and have been, protected by laws that control their identity as to place of origin and unique characteristics. Some notable examples include wines, cheeses, olive oils, specialty vinegars, spices, and condiments. Coffee produced in Kona and other notable Hawaiian appellations deserve to be treated in the same manner. The Kona brand must have its integrity protected to command high respect in the coffee world.

Our reasons for **strong support of HB 2773:**

1. **Misleading labeling is fraudulent** – consumers should be able to know what they are actually paying for. That **Misleading labeling is fraudulent** has already been proven in at least one class action lawsuit [Corker, et al. v *COSTCO WHOLESALE CORPORATION [case no.2:19-cv-00290-RSL]* in the United States District Court for the Western District of Washington as settlement benefits have been sent].

2. Use of the name without requiring the content exploits the region and deprives farmers of income. THIS HOLDS TRUE FOR ALL PRODUCTS MADE IN HAWAII! Hawaiian Macadamia nuts are second to none and are fantastic!

Hawai'i needs to step up and protect the brand integrity of all products are grown or made throughout the islands. Thank you for your positive consideration and passage of **HB 2773**.

Sincerely,

Cynthia A. Maryanoff

Co-CEO, and CTO, Absolute Palate LLC

24 Feb 2024

HB-2773-HD-1

Submitted on: 2/26/2024 9:37:16 AM

Testimony for CPC on 2/27/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Chet Gardiner	Individual	Support	Written Testimony Only

Comments:

For fairness for Hawai'i's farmers and protection for consumers, please pass HB2773.