

**ACT 233**

**H.B. NO. 135**

A Bill for an Act Relating to Misbranding.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 486, Hawaii Revised Statutes, is amended as follows:

(a) Section 486-1, Hawaii Revised Statutes, is amended to read as follows:

**“Sec. 486-1 Definitions.** As used in this chapter unless the context otherwise requires:

- (1) ‘Advertising’ or ‘advertising medium’ includes all publicity, mass media, signs, banners, posters, placards, labels, streamers, marks, brands, grades, descriptions, or displays.
- (2) ‘Commodity in package form’ means a weight or measure of a commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale, exclusive, however, of an auxiliary shipping container enclosing packages that individually conform to the requirements of this chapter. An individual item or lot of any commodity not in package form as defined in this section, but on which there is marked a selling price based on an established price per unit of weight or of measure, is a commodity in package form.
- (3) ‘Consumer commodity’ means any article, product, good or commodity of any kind that is customarily produced or distributed for sale through mercantile or retail sales outlets for consumption or use by individuals, including but not limited to food products and consumer packages.
- (4) ‘Consumer package’ means a commodity in package form that is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption or use by individuals for the purposes of personal care or in the performance of services ordinarily rendered in or about the household or in connection with personal possessions.
- (5) ‘Director’, ‘deputy director’, and ‘deputy to the chairman’ mean, respectively, the State director of weights and measures, the State deputy director of weights and measures, and the deputy to the chairman of the board of agriculture.
- (6) ‘Gasoline’ means any petroleum product which conforms to the standards set forth in D-439 of the American Society for Testing Materials, except that (A) vapor pressure specification may be omitted, and (B) a distillation end point specification of 437 degrees F maximum shall be added.
- (7) ‘Holding tank’ means any tank, other than vehicle tank, intended to hold, store, or otherwise contain, any product for commercial use, either as a measure per se or as a container.
- (8) ‘Inspector’ means any qualified State officer or employee designated by the director as an inspector of weights and measures.
- (9) ‘Intrastate commerce’ means any and all commerce or trade begun, carried on, and completed wholly within the limits of the State.

- (10) 'Introduced into intrastate commerce' means the time and place at which the first sale and delivery of a commodity is made within the State, the delivery being made either directly to the purchaser or to a common carrier for shipment to the purchaser.
- (11) 'Label' means any written, printed or graphic matter affixed to, applied to, attached to, blown into, formed, molded into, embossed on, or appearing upon or adjacent to a consumer package containing any consumer commodity, for purposes of branding, identifying, or giving any information with respect to the commodity or to the contents of the package.
- (12) 'Lubricating oil' means those products which are intended for use in internal combustion engines and which conform to the specifications of this chapter or the regulations promulgated pursuant to this chapter. In addition to all other requirements of this chapter: (A) Lubricating oil shall be free from water and suspended matter when tested by means of centrifuge, in accordance with the standard test therefor. (B) Lubricating oil containers shall be marked so as to include on the label a designation of the S.A.E. viscosity classification. The viscosity may also be expressed in Saybolt Seconds Universal (SSU) at 210 degrees F. The flash points for the various S.A.E. (Society of Automotive Engineers) classifications shall not be less than the following when tested in accordance with the Standard Test for flash point and fire point by means of the Cleveland open cup:

Viscosity Classification	Minimum Flash Degrees Fahrenheit
SAE 5W	305
SAE 10W	335
SAE 20W	345
SAE 20	345
SAE 30	355
SAE 40	375
SAE 50	400
Grade 60	435
Grade 70	470

- (C) Lubricating oil containers shall be marked so as to disclose whether the contents have previously been used for the lubricating of internal combustion engines or any gearing or shafting attached thereto, or for any other lubricating purposes, or have been re-run, filtered, redistilled, reclaimed, or re-refined.
- (13) 'Manufacturer' includes manufacturers, processors, producers, packers, refiners, importers, dealers, or agents at wholesale or retail level.
- (14) 'Misbranded' includes:
  - (A) false, incomplete, incorrect or misleading labeling;
  - (B) misrepresentation as to the identity, quantity, quality or point of origin;

- (C) misrepresentation as to the principal place of business of the manufacturer;
  - (D) misrepresentation by vignette, pictorial display, identifiable geographical location or by any term, word or phrase in juxtaposition to any other information associated with, labeled on or accompanying the consumer commodity which falsely alludes to a specific point of origin, a general locale such as a state, or to historical usage by a people;
  - (E) misrepresentation as to originality or creativity;
  - (F) misrepresentation of the consumer commodity as an imitation to another or as an imitation to a generic product; and
  - (G) misrepresentation in any other manner tending to confuse the prospective purchaser.
- (15) 'Nonconsumer package' means any commodity in package form other than a consumer package, and particularly a package designed solely for industrial or institutional use or for wholesale distribution only.
  - (16) 'Octane number or octane rating' means the Research Octane Number (RON) for fuel as defined by the American Society for Testing Materials.
  - (17) 'Package' means any container or wrapper enclosing any commodity for sale, delivery or display, but does not include shipping containers or wrappings used solely for the transportation of that commodity.
  - (18) 'Petroleum product' includes gasoline, liquefied petroleum gas when used as fuel, distillate, diesel fuel, kerosene, thinner, solvent, or any motor fuel or any oil represented as lubricating or motor oil.
  - (19) 'Petroleum product dispenser' means a commercial measuring device subject to this chapter and includes but is not limited to: lubricating oil bottles, measure-containers, containers, and mechanisms or machines designed to measure and deliver liquid by a definite volume. Means may or may not be provided (A) to indicate automatically or on a command signal, one of a series of unit prices or the total money value or cost of the liquid measured, or (B) to make deliveries corresponding to specific money values at a definite unit price.
  - (20) 'Sell' and 'sale' include barter and exchange.
  - (21) 'Standard test' or 'standard method', means tests or methods conducted or prescribed in accordance with the latest published standards of: The American Society for Testing Materials, The United States of America Standards Institute, The National Bureau of Standards, or any test or method prescribed in this chapter or in accordance with regulations promulgated pursuant to this chapter.
  - (22) 'State' means the State of Hawaii.
  - (23) 'Vehicle tank', means any tank, which is mounted on a vehicle and is intended for use as a commercial measure.
  - (24) 'Weight certificate' means a certificate of quantity issued in compliance with this chapter and shall include certificates of weight,

measure or count, and shall be prima facie evidence of the accuracy of the amount shown.

(25) 'Weights and measures' means all weights and measures of every kind, instruments and devices for weighing and measuring, and any appliances and accessories associated with any or all such instruments and devices."

(b) Chapter 486, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"Sec. 486- Misbranding.** No person shall deliver for introduction, hold for introduction or introduce; or keep, offer or expose for sale; or sell into intrastate commerce, any consumer commodity which is misrepresented or misbranded in any manner.

The director shall pursuant to section 486-9 and chapter 91, adopt rules and regulations relating to misbranding."

SECTION 2. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.\*

SECTION 3. This Act shall take effect upon its approval.

(Approved June 14, 1974.)

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\*Edited accordingly.