



GOV. MSG. NO. 1048

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

July 10, 2007

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fourth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

I am transmitting herewith SB1988 SD1 HD2, without my approval, and with the statement of objections relating to the measure.

SB1988 SD1 HD2

A BILL FOR AN ACT RELATING TO HONEY.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

P R O C L A M A T I O N

WHEREAS, under Section 16 of Article III of the Constitution of the State of Hawaii, the Governor is required to give notice, by a proclamation, of the Governor's plan to return with the Governor's objections any bill presented to the Governor less than ten days before adjournment sine die or presented to the Governor after adjournment sine die of the Legislature; and

WHEREAS, Senate Bill No. 1988, entitled "A Bill for an Act Relating to Honey," passed by the Legislature, was presented to the Governor within the aforementioned period; and

WHEREAS, Senate Bill No. 1988 is unacceptable to the Governor of the State of Hawaii;

NOW, THEREFORE, I, LINDA LINGLE, Governor of the State of Hawaii, do hereby issue this proclamation, pursuant to the provisions of Section 16 of Article III of the Constitution of the State of Hawaii, giving notice of my plan to return Senate Bill No. 1988 with my objections thereon to the Legislature as provided by said Section 16 of Article III of the Constitution.

DONE at the State Capitol, Honolulu,
State of Hawaii, this 25th
day of June, 2007.



LINDA LINGLE
Governor of Hawaii

EXECUTIVE CHAMBERS

HONOLULU

July 10, 2007

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 1988

Honorable Members
Twenty-Fourth Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, Senate Bill No. 1988, entitled "A Bill for an Act Relating to Honey."

The purpose of this bill is to establish labeling and advertising requirements for products produced in whole or in part from Hawaii-produced honey.

This bill is objectionable because it raises serious constitutional issues, particularly in its effect on interstate commerce and commercial free speech.

While I applaud this bill's attempt to ensure the accurate labeling and advertising of honey products that are produced in Hawaii and the integrity of products that claim to contain Hawaii's high quality honey, this bill does not limit its application to such. Instead it is far-reaching in its application to all honey products that contain any amount of Hawaii-produced honey, even reaching labeling requirements for those who were not planning on making any claims with regard to geographic origin. For example, this bill would require

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particular geographic identification for honey with a very small quantity of Hawaii honey, even in the absence of a desire by the manufacturer to make any representation as to type or origin of the honey. Thus, this bill is simply not narrowly tailored to prevent the deception or misleading of consumers, as its labeling and advertising requirements would apply even to products that may not otherwise make a claim to contain Hawaii-produced honey or are not otherwise deceptive or misleading. Therefore, this bill's labeling and advertising requirements may be deemed to be more extensive than necessary to advance the Legislature's purpose, in violation of the First Amendment.

The bill also presents significant Commerce Clause issues, especially as it reaches products distributed outside Hawaii. The bill attempts to regulate manufacturers and advertisers outside of Hawaii who deal with products that contain at least a portion of Hawaii-produced honey. Additionally, the wording of this bill would require honey produced outside of Hawaii to meet Hawaii's grade standards.

In contrast, current law regulating the labeling of Hawaii-grown coffee applies only to the portion of the coffee that is Hawaii-grown. Similarly, labeling requirements for Hawaii-grown macadamia nuts apply only to package labels making the geographic claim that all or a portion of its macadamia nut

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contents were grown in Hawaii. These laws are more narrowly tailored to achieving accurate and non-deceptive labeling of Hawaii-grown products.

I believe this bill should be re-written so that misleading or deceptive claims about Hawaii honey are prohibited, but also so that the bill does not violate provisions of the United States Constitution.

For the foregoing reasons, I am returning Senate Bill No. 1988 without my approval.

Respectfully,



LINDA LINGLE
Governor of Hawaii

A BILL FOR AN ACT

RELATING TO HONEY.

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

1 SECTION 1. The legislature finds that producers of high
2 quality honey in Hawaii have been losing market share to
3 products labeled as "Honey", which fail to disclose their
4 country of origin or contain blends of sweeteners that should be
5 labeled as "processed honey".

6 The legislature also finds that large amounts of processed
7 honey are imported into the United States, repackaged by United
8 States-based companies, and labeled using formats and verbiage
9 that mislead the consumer into believing that the products are
10 pure honey produced in the United States. While this is a
11 consumer protection issue, it is also one of fairness to Hawaii
12 honey producers and the United States honey industry.

13 The purpose of this Act is to ensure that honey products:

- 14 (1) Are accurately advertised or labeled as produced in
15 Hawaii; and
16 (2) If advertised or labeled as produced in Hawaii, meet
17 grade standard requirements of the U.S. Department of



1 Agriculture and rules established by the state
2 department of agriculture.

3 SECTION 2. Chapter 486, Hawaii Revised Statutes, is
4 amended by adding a new section to be appropriately designated
5 and to read as follows:

6 "§486- Hawaii-produced honey; labeling requirements.

7 (a) In addition to all other labeling requirements, the
8 identity statement used for labeling or advertising honey
9 products produced in whole or in part from Hawaii-produced honey
10 shall meet the following requirements:

11 (1) For honey that contains one hundred per cent Hawaii-
12 produced honey by weight, the identity statement may
13 consist of the phrase "Hawaiian honey";

14 (2) For honey consisting entirely of two or more Hawaii-
15 produced honeys, the identity statement may consist of
16 the per cent honey by weight of the Hawaii-produced
17 honeys used in the blend, and the phrase "blend of
18 Hawaiian honeys";

19 (3) For honey consisting of a blend of one or more Hawaii-
20 produced honeys and honey not produced in Hawaii, the
21 identity statement shall consist of the per cent honey
22 by weight of the Hawaii-produced honeys used in the



1 blend and the per cent honey by weight of the honey
2 not produced in Hawaii and the phrase "honey blend";
3 and

4 (4) Each word or character in the identity statement shall
5 be of the same type size and shall be contiguous. The
6 smallest letter or character of the identity statement
7 on packages of sixteen ounces or less net weight shall
8 be at least one and one-half times the type size
9 required under federal law for the statement of net
10 weight, or three-sixteenths of an inch in height,
11 whichever is smaller. The smallest letter or
12 character of the identity statement on packages of
13 greater than sixteen ounces net weight shall be at
14 least one and one-half times the type size required
15 under federal law for the statement of net weight.
16 The identity statement shall be conspicuously
17 displayed without any intervening material in a
18 position above the statement of net weight. Upper and
19 lower case letters may be used interchangeably in the
20 identity statement.

21 (b) A listing of the geographic origins of a blend
22 consisting of one hundred percent Hawaii-produced honey may show



1 the various Hawaii-produced honeys on the label. If used, this
2 list shall consist of the term "contains:", followed by, in
3 descending order of per cent by weight and separated by commas,
4 the respective geographic origin of the various honeys in the
5 blend that the manufacturer chooses to list. Each geographic
6 origin shall be preceded by the per cent honey by weight
7 represented by that geographic origin expressed as a number
8 followed by the per cent sign. The type size used for this list
9 shall not exceed half that of the identity statement. This list
10 shall appear below the identity statement, if included on the
11 front panel of the label.

12 (c) A listing of the geographic origins of honeys not
13 produced in Hawaii that are included in a blend shall be shown
14 on the label. This list shall consist of the term "contains:",
15 followed by, in descending order of per cent by weight and
16 separated by commas, the respective geographic origin of various
17 honeys in the blend. Each geographic origin shall be preceded
18 by the per cent of honey by weight represented by that
19 geographic origin, expressed as a number followed by the per
20 cent sign. The type size used for this list shall not exceed
21 half that of the identity statement. This list shall appear
22 below the identity statement.



- 1 (d) It shall be a violation of this section:
- 2 (1) To use the identity statement specified in paragraphs
- 3 (a) (1) and (2) or similar terms in labeling or
- 4 advertising unless the package of honey contains one
- 5 hundred per cent honey produced in the state;
- 6 (2) To use the geographic origin "Hawaii" or any
- 7 geographic origin located in the state in labeling or
- 8 advertising, including in conjunction with a variety
- 9 of honey or in any other manner, if the honey contains
- 10 less than fifty-one per cent honey by weight produced
- 11 in the state;
- 12 (3) To use a geographic origin in labeling or advertising
- 13 honey, including in conjunction with a variety of
- 14 honey or in any other manner, if the honey used in
- 15 that product does not meet the grade standard
- 16 requirements of rules adopted under chapter 147; and
- 17 (4) To misrepresent the geographic origin, on a label or
- 18 in advertisements, of honey that has been imported
- 19 into the United States in bulk and repackaged.
- 20 (e) Apiculturists, manufacturers, or other persons who
- 21 package honey covered by this section shall:



1 (1) Maintain, for a period of two years, records on the
2 volume and geographic origin of honeys produced and
3 sold and any other records required by the department
4 for the purpose of enforcing this section; and

5 (2) Provide authorized employees of the department with
6 access to these records during normal business hours.

7 (f) The department shall adopt rules pursuant to chapter
8 91 to establish and enforce a program certifying compliance with
9 this section and ensuring that honey sold in this state is not
10 misbranded as defined in sections 486-1 and 486-118.

11 (g) For the purposes of this section:

12 "Geographic origin" means that country, state, region,
13 county, city, town, village, or place where the raw honey is
14 collected, packaged, or otherwise produced.

15 "Per cent honey by weight" means the percentage calculated
16 by dividing the weight in pounds of honey of one geographic
17 origin used in a production run of blended honey, by the total
18 weight in pounds of the honey used in that production run of
19 honey, and multiplying the quotient by one hundred.

20 "Variety of honey" means the significant variety of floral
21 source or the classification of flavor of the honey.



1 SECTION 3. Chapter 147, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By amending the title of part I to read:

4 **"PART I. FRESH FRUITS AND VEGETABLES, NUTS, HONEY, AND COFFEE"**

5 2. By amending the title of part II to read:

6 **"PART II. EXPORTS: FRUITS, VEGETABLES,
7 NUTS, [AND] COFFEE, AND HONEY"**

8 SECTION 4. Section 147-1, Hawaii Revised Statutes, is
9 amended by amending the definition of "agricultural commodity"
10 to read as follows:

11 ""Agricultural commodity" means fresh fruits and fresh
12 vegetables of every kind and character, whether or not frozen or
13 packed in ice, whether produced in the State or imported, nuts,
14 and coffee, whether cherry, or parchment, or green beans which
15 have been produced in the State[+], and raw unprocessed honey,
16 whether produced in the State or imported."

17 SECTION 5. Section 147-21, Hawaii Revised Statutes, is
18 amended by amending the definition of "agricultural commodity"
19 to read as follows:

20 ""Agricultural commodity" means fruits, vegetable, nuts,
21 [and] coffee[+], and raw unprocessed honey."



1 SECTION 6. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 7. This Act shall take effect on July 1, 2007.

