

# SB 1133

RELATING TO THE DEPOSIT BEVERAGE  
CONTAINER PROGRAM.

Removes the exemption for dietary  
supplements from the deposit beverage  
container program.

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



LORETTA J. FUDDY, A.C.S.W., M.P.H.  
DIRECTOR OF HEALTH

STATE OF HAWAII  
DEPARTMENT OF HEALTH  
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In reply, please refer to:  
File:

## SENATE COMMITTEE ON ENERGY AND ENVIRONMENT

### SB 1133, RELATING TO THE DEPOSIT BEVERAGE CONTAINER PROGRAM

Testimony of Loretta J. Fuddy, A.C.S.W., M.P.H.  
Director of Health

January 31, 2013  
2:45 p.m.

1 **Department's Position:** The Department of Health strongly supports this measure.

2 **Fiscal Implications:** Undetermined.

3 **Purpose and Justification:** This bill proposes to eliminate the exemption for dietary supplements from  
4 the Deposit Beverage Container (DBC) Program.

5 Dietary supplements have been excluded from the DBC Program, along with milk, drugs,  
6 medical foods and infant formula, since its inception. Statute cites federal Food and Drug  
7 Administration (FDA) regulations in defining "dietary supplement." However, the department has since  
8 learned that the FDA does not vigorously regulate the dietary supplement industry. Its loose approach  
9 gives manufacturers nearly free reign to unilaterally define a product as a dietary supplement or not.

10 The ambiguity this creates makes it very difficult for the DBC Program to make consistent  
11 eligibility determinations on potential dietary supplements for Hawaii's program. These difficulties are  
12 frustrating to both the deposit program and beverage distributors because of the disproportionate time  
13 and effort involved in making a proper determination. The department believes that deleting the  
14 "dietary supplement" exemption is the most efficient way of allowing more consistent eligibility

1 determinations.

2           It should be clear that the exemption for drugs, medical food and infant formula remains in the law.  
3 The department has no intention of modifying this exemption.

4           Our goal is to create social and physical environments that promote and support good health for all.  
5 Thank you for the opportunity to testify on this measure.

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Promoting Lifelong Health & Wellness  
**Hawaii State Department of Health**

Is it a "HI-5" Beverage Container or Not?  
 The impact of SB 1133

For about a decade, most beverage containers in Hawaii have been recycled through the five-cent Deposit Beverage Container (HI-5) program. Consumers can redeem their empty bottles and cans for five cents each from certified recyclers. The HI-5 Program covers many types of drink containers. The Department of Health proposes to improve the program by including "dietary supplement" drink containers as specified in SB 2824.

How do we know what drinks are covered by the program? There are **three criteria** that determine if a beverage container is eligible for a five-cent redemption. A product must meet all three criteria to be included in the program.

**Criteria #1: Beverage type**

The program covers most beverages, including beer, malt based beverages, mixed spirits, mixed wines and nearly all non-alcoholic beverages such as water and fruit juice. Not included are wines, spirits, milk, drugs, medical food, infant formula and **dietary supplements**.

**Criteria #2: Container type**

HI-5 includes beverage containers made of glass or metal;



or,

made of polyethylene terephthalate (PET or PETE) plastic;  
 (PET plastic is clear and is used for many soft-drinks and sodas.)



or,

made of high density polyethylene (HDPE) plastic.  
 (HDPE is usually a cloudy white. It is used in a small number of products covered by the HI-5 program. Although not covered by the program, milk jugs are a common example of an HDPE plastic.)




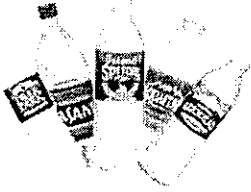



**Criteria #3: Container size**

Only containers less than or equal to 64 fluid ounces are covered by the program. The largest common container covered by the program is the two-liter soda bottle.

**Is it a "HI-5 Beverage Container or Not? Some Examples:**

✓ means the product meets the criteria

X means the product does not meet the criteria

	<ul style="list-style-type: none"> <li>✓ Beverage type</li> <li>✓ Container type</li> <li>✓ Container size</li> </ul>	<p style="text-align: center;"><b>In the program</b></p> <p style="text-align: center;">Sports drinks are eligible and are currently covered by the DBC program.</p>
	<ul style="list-style-type: none"> <li>✓ Beverage type</li> <li>✓ Container type</li> <li>✓ Container size</li> </ul>	<p style="text-align: center;"><b>In the program</b></p> <p style="text-align: center;">Bottled water products are eligible and are currently covered by the DBC program.</p>
	<ul style="list-style-type: none"> <li>✓ Beverage type</li> <li>X Container type</li> <li>✓ Container size</li> </ul>	<p style="text-align: center;"><b>Not in the program</b></p> <p style="text-align: center;">Ensure and similar products are eligible beverages. However, the bottles are made of Type 5 plastic which is not eligible under the DBC program.</p>
	<ul style="list-style-type: none"> <li>X Beverage type</li> <li>✓ Container type</li> <li>✓ Container size</li> </ul>	<p style="text-align: center;"><b>Not in the program</b></p> <p style="text-align: center;">Similac and other prepared infant formulas are exempt from the DBC program. The proposed deletion of the dietary supplement exemption will NOT affect infant formula.</p>
<p style="text-align: center;">The HI-5 program now excludes "dietary supplements" as defined by the Food and Drug Administration. However, the FDA allows manufacturers to declare virtually any product a "dietary supplement" and avoid being in the HI-5 program. SB 2824 would simplify and improve the HI-5 program by removing dietary supplements from the list of excluded products.</p> <p style="text-align: center;">This change will save staff time and state funds.</p>		
	<ul style="list-style-type: none"> <li>X Beverage type</li> <li>✓ Container type</li> <li>✓ Container size</li> </ul>	<p style="text-align: center;"><b>Not in the program, but SHOULD be</b></p> <p style="text-align: center;">This bottled water product is exempted from the DBC program simply because it claims to be a "dietary supplement."</p>

**SB1133**

Submitted on: 1/29/2013

Testimony for ENE on Jan 31, 2013 14:45PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Marjorie Ziegler	Conservation Council for Hawai'i	Support	No

Comments:



## HAWAII FOOD INDUSTRY ASSOCIATION (HFIA)

1050 Bishop St. Box 235  
Honolulu, HI 96813  
Fax : 808-791-0702  
Telephone : 808-533-1292

DATE: Thursday, January 31, 2013

PLACE: Conference Room 225

TIME: 2:45 P.m.

TO: COMMITTEE ON ENERGY AND ENVIRONMENT

Sen. Mike Gabbard, Chair; Sen. Russell E. Ruderman, Vice Chair

FROM: Hawaii Food Industry Association: Lauren Zirbel, Executive Director

**RE: SB 24 RELATING TO THE ENVIRONMENT & SB 1133 RELATING TO THE DEPOSIT BEVERAGE CONTAINER PROGRAM**

Removes the exemption for dietary supplements from the deposit beverage container program.

Chair & Committee Members:

The Hawaii Food Industry Association respectfully opposes SB 24 and SB 1133.

The United States Food and Drug Administration regulates nearly all aspects of nutritional supplements including the packaging through the implementation of Dietary Supplement Health and Education Act (DSHEA) of 1994. DSHEA defines a dietary supplement as a product taken by mouth that contains a "dietary ingredient" intended to supplement the diet. The "dietary ingredients" in these products may include: vitamins, minerals, herbs or other botanicals, amino acids, and substances such as enzymes, organ tissues, glandulars, and metabolites. Dietary supplements can also be extracts or concentrates, and may be found in many forms other than liquids such as tablets, capsules, soft gels, gel caps, bars, or powders. Whatever their form may be (solid, liquid, or other), OSHEA places dietary supplements in a special category under the general umbrella of "foods" and removing their exemption from the bottle deposit law is inconsistent with how they are treated under federal law. Also, their inclusion in the bottle deposit program would be inequitable and in some instances the equivalent of charging a redemption fee for the plastic packaging of a meal replacement bar.

Mahalo for the opportunity to provide this testimony.



# Sierra Club Hawai'i Chapter

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## SENATE COMMITTEE ON ENERGY AND ENVIRONMENT

January 31, 2013, 2:45 P.M.  
(Testimony is 1 page long)

### TESTIMONY IN SUPPORT OF SB 1133

Chair Gabbard and members of the Committee:

The Sierra Club, Hawaii Chapter, with over 10,000 dues paying members and supporters statewide, respectfully *supports* SB 1133. This measure establishes closes a loophole in the tremendously successful deposit beverage container program.

Hawaii's bottle law has proven to be an overwhelming success for Hawaii's environment, with *over 930 million bottles and cans diverted from Hawaii's landfills annually*. Beyond waste diversion, our recycling law reduces litter, creates jobs, and provides opportunities for churches, charities, and schools to fundraise. The recycling program proves that a little change can make a big difference.

Despite its success with redeeming over four billion beverage containers, *the bottle law can be improved*. Some drinks are utilizing a loophole -- a "dietary supplement" exemption -- in order to evade complying with our beverage container (HI-5) law. There is no logical basis to exempt these beverages from our incredibly successful recycling program and to allow certain distributors to have an advantage in the marketplace.

If we want to move Hawaii to a sustainable future and help solve our growing landfill crisis, we need to start taking the "small changes" necessary to eliminate our problems. Including dietary containers would be a start.

Mahalo for the opportunity to testify.



**SB1133**

Submitted on: 1/28/2013

Testimony for ENE on Jan 31, 2013 14:45PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Nancy Davlantes	Individual	Support	No

Comments:

**SB1133**

Submitted on: 1/28/2013

Testimony for ENE on Jan 31, 2013 14:45PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Paul Hanada	Individual	Support	No

Comments: Please support SB1133. Thank you.