



DAVID Y. IGE
GOVERNOR

JOSH GREEN
LT. GOVERNOR

**STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

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Testimony of the Department of Commerce and Consumer Affairs

**Before the
House Committee on Consumer Protection & Commerce**

Wednesday, February 16, 2022

2:00 p.m.

Via Videoconference

On the following measure:

H.B. 2227, H.D. 1, RELATING TO THE “MADE IN HAWAII” PROGRAM

Chair Johanson and Members of the Committee:

My name is Stephen Levins, and I am the Executive Director of the Department of Commerce and Consumer Affairs’ (Department) Office of Consumer Protection. The Department opposes this bill.

The purposes of this bill are to: (1) transfer the regulation of the “Made in Hawaii” label from the Department of Business, Economic Development and Tourism (DBEDT) to the Department of Commerce and Consumer Affairs while maintaining DBEDT’s responsibility for promoting consumer demand, coordinating manufacturing of and coordinating and promoting distribution channels for “Made in Hawaii”, ensuring that appropriate patents and copyrights are acquired for “Made in Hawaii”, and identifying new funding opportunities to promote the expansion of “Made in Hawaii” products; (2) rename the “Hawai’i Made” program and trademark, currently administered and owned by DBEDT, to the “Made in Hawaii” program, (3) repeal 486-119, Hawaii Revised Statutes that provides for the trademark “Made in Hawaii with Aloha” with the

Department of Agriculture (DOA), and (4) appropriate \$150,000 in general funds for FY23 to DBEDT for oversight and administration of the Made in Hawaii program and to promote the Made in Hawaii brand.

It is apparent from the testimony in the prior committee that the DOA under its Made in Hawaii program has done a good job bolstering agricultural entities that grow and sell locally and in enforcing its “Made in Hawaii with Aloha” branding program due to its expertise and experience with Hawaii-made and Hawaii-processed products. In that regard, the focus of the work of both DBEDT and DOA as it relates to this bill has been on bolstering the “Made in Hawaii” or “Made in Hawaii with Aloha” branding, rather than on deceptive marketing.

Hawaii is a recognizable geographical “brand” known world-wide for its unique culture, natural beauty, and aloha spirit. While the Department supports protecting the goodwill of the brand against improper or misleading use by people selling products labeled “Made in Hawaii”, this measure reestablishes a standard that is difficult to enforce.

The Federal Trade Commission requires that a product advertised as “Made in the USA” be “all or virtually all” made in the U.S. Therefore, even if 51% of the wholesale value of a product is derived from within the State, but the remaining 49% comes from products made in a foreign country, the Hawaii standard would be inconsistent with the “Made in the USA” standard. Whatever standard Hawaii comes up with must be reconciled with the “Made in the USA” standard.

The Department is not the appropriate agency to enforce these standards because it does not have the expertise to determine the origin and provenance of products or assess the wholesale value derived from within the State relevant to the product overall. The Department of Agriculture has the expertise and depth to determine compliance with the “Made in Hawaii” standard. If enforcement of the standard is necessary, pursuant to its standard operating procedure, the Department of Agriculture would request the Hawaii Attorney General to enforce the applicable law as allowed by statute. Transferring enforcement to the Department of Commerce and Consumer Affairs is unnecessary.

Thank you for the opportunity to testify on this bill.

DAVID Y. IGE
Governor

JOSH GREEN
Lt. Governor



PHYLLIS SHIMABUKURO-GEISER
Chairperson, Board of Agriculture

MORRIS M. ATTA
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TESTIMONY OF PHYLLIS SHIMABUKURO-GEISER
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE HOUSE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION

FEBRUARY 16, 2022
2:00 P.M.
CONFERENCE ROOM 224 & VIA VIDEOCONFERENCE

HOUSE BILL NO. 2227 HD1
RELATING TO THE "MADE IN HAWAII" PROGRAM

Chairperson Johanson and Members of the Committee:

Thank you for the opportunity to testify on House Bill 2227 HD1, which transfers the enforcement of the "Made in Hawaii" trademark from the Department of Agriculture (Department) to the Department of Commerce and Consumer Affairs (DCCA), renames the "Hawaii Made" program to the "Made in Hawaii" program and makes an appropriation.

The Department supports the bill with reservations and offers clarifying comments.

The Department notes for purposes of clarification that trademark that we currently own, administer, and enforce is the "Made in Hawaii with Aloha" (MIHA) trademark pursuant to Hawaii Revised Statutes ("HRS") §486-119. It is the Department's understanding that phrase "Made in Hawaii" is not a protected trademark at this time.

Currently, according to HRS §486-119, it is not allowable for producers to "keep, offer, display or expose for sale, or solicit for the sale of any item, product, souvenir, or any other merchandise that is labeled 'made in Hawaii'...or uses the phrase 'made in Hawaii' as an advertising or media tool for any craft item that has not been manufactured, assembled, fabricated, or produced within the State and that has not had at least fifty-one per cent of its wholesale value added by manufacture, assembly, fabrication, or production within the State."



This bill provides for the Department of Business, Economic Development, and Tourism (DBEDT) to administer and oversee a “Made in Hawaii” program for manufactured products and hold ownership of the “Made in Hawaii” trademark. The bill further provides that DBEDT shall promote consumer demand, coordinate manufacturing, coordinate and promote distribution channels, ensure the appropriate patents and copyrights are acquired, and identify new funding opportunities for promoting the expansion of “Made in Hawaii” products.

The Department supports DBEDT’s administration and oversight of the “Made in Hawaii” program and our understanding is that currently any entity, including DBEDT, can promote consumer demand, coordinate manufacturing, coordinate and promote distribution channels, ensure the appropriate patents and copyright are acquired, and identify new funding opportunities to promote the expansion of their “Made in Hawaii” products, as they deem appropriate for their products.

Thank you for the opportunity to testify on this measure.



DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

DAVID Y. IGE
GOVERNOR

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Statement of
MIKE MCCARTNEY
Director

Department of Business, Economic Development, and Tourism
before the

HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Wednesday, February 16, 2022
2:00 pm

Via Videoconference
State Capitol, Conference Room 329

In consideration of
HB 2227, HD1
RELATING TO THE "MADE IN HAWAII" PROGRAM.

Chair Johanson, Vice Chair Kitagawa and members of the Committee.

The Department of Business, Economic Development and Tourism (DBEDT) offers these comments on HB 2227, HD1:

- This bill proposes to change the name of the "Hawaii Made" program to "Made in Hawaii" program. DBEDT recommends that this name change not be made until the most advantageous and flexible name for Hawaii manufacturers can be determined. HB2082 proposes to conduct a study on the recommendations on the best usage.
- Page 2, Line 19 does not include "including Hawaii sourced goods, services and intellectual property" as stipulated in the last line of the current Section 201-3.5 (c), HRS.
- We support this bill provided that its passage does not replace or adversely impact priorities indicated in our Executive Budget.

Thank you for this opportunity to testify.

DAVID Y. IGE
GOVERNOR



CRAIG K. HIRAI
DIRECTOR

GLORIA CHANG
DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
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ADMINISTRATIVE AND RESEARCH OFFICE
BUDGET, PROGRAM PLANNING AND
MANAGEMENT DIVISION
FINANCIAL ADMINISTRATION DIVISION
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

WRITTEN ONLY
TESTIMONY BY CRAIG K. HIRAI
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE
ON
HOUSE BILL NO. 2227, H.D. 1

February 16, 2022
2:00 p.m.
Room 329 and Videoconference

RELATING TO THE "MADE IN HAWAII" PROGRAM

The Department of Budget and Finance (B&F) offers comments on this bill.

House Bill (H.B.) No. 2227, H.D. 1, intends to: 1) transfer the regulation of the "Made In Hawai'i" ("MIH") label from the Department of Business, Economic Development and Tourism (DBEDT) to the Department of Commerce and Consumer Affairs (DCCA); 2) rename the "Hawai'i Made" ("HM") program and trademark, currently administered and owned by DBEDT, to the "MIH" program and trademark; 3) repeal Section 486-119, HRS; and 4) appropriate \$150,000 in general funds for FY 23 for DBEDT for oversight and administration of the "MIH" program and to promote the "MIH" brand.

B&F notes that Act 2, SpSLH 2021, originally Senate Bill (S.B.) No. 263, SLH 2021, only recently required DBEDT to oversee and promote the "HM" program and trademark and appropriated \$150,000 in American Rescue Plan (ARP) Act funds for FY 22 to DBEDT for these purposes. However, the Department of Agriculture (DOA) concurrently manages the "Made in Hawai'i with Aloha" ("MIHA") program and enforces labelling regulations on Hawai'i-made and Hawai'i-processed products pursuant to

Section 486-119, HRS. This resulted in Governor's Message No. 1295 vetoing S.B. No. 263, noting objections over DBEDT's lack of statutory powers to enforce labeling regulations on these products and the duplication of jurisdiction over labeling for Hawai'i-made products between DOA and DBEDT.

B&F is concerned that this bill will create additional and unnecessary regulatory overlap by transferring regulatory authority of "MIH" products to DCCA, when the purpose of the bill could be better achieved by: 1) renaming DOA's "MIHA" program to the "MIH" program; 2) leaving DOA's regulatory powers in place in Section 486-119, HRS; 3) deleting DBEDT's regulatory responsibilities over "MIH" products, as currently written in Section 2 of this bill; and 4) appropriating additional resources to DBEDT for promotion and to DOA for enforcement of "MIH" products, as necessary. Furthermore, DCCA recently testified in opposition to H.B. No. 2227's companion bill in the Senate, noting that it does not have the expertise to determine the origin or wholesale value of products necessary to enforce the "MIH" labeling regulations as proposed.

Finally, B&F notes that, with respect to the general fund appropriation in this bill, the federal Coronavirus Response and Relief Supplemental Appropriations Act requires that states receiving Elementary and Secondary School Emergency Relief (ESSER) II funds and Governor's Emergency Education Relief II funds must maintain state support for:

- Elementary and secondary education in FY 22 at least at the proportional level of the state's support for elementary and secondary education relative to the state's overall spending, averaged over FYs 17, 18 and 19; and
- Higher education in FY 22 at least at the proportional level of the state's support for higher education relative to the state's overall spending, averaged over FYs 17, 18 and 19.

Further, the federal ARP Act requires that states receiving ARP ESSER funds must maintain state support for:

- Elementary and secondary education in FY 22 and FY 23 at least at the proportional level of the state's support for elementary and secondary education relative to the state's overall spending, averaged over FYs 17, 18 and 19; and
- Higher education in FY 22 and FY 23 at least at the proportional level of the state's support for higher education relative to the state's overall spending, averaged over FYs 17, 18 and 19.

The U.S. Department of Education has issued rules governing how these maintenance of effort (MOE) requirements are to be administered. B&F will be working with the money committees of the Legislature to ensure that the State of Hawai'i complies with these ESSER MOE requirements.

Thank you for your consideration of our comments.



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FEBRUARY 16, 2022

HEARING BEFORE THE
HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

TESTIMONY ON HB 2227, HD1
RELATING TO THE "MADE IN HAWAII" PROGRAM

Conference Room 329 & Videoconference
2:00 PM

Aloha Chair Johanson, Vice-Chair Kitagawa, and Members of the Committee:

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

The Hawaii Farm Bureau provides comments on HB 2227, HD1, which transfers the enforcement of the "Made in Hawaii" trademark from the Department of Agriculture to the Department of Commerce and Consumer Affairs and renames the "Hawaii Made" program to the "Made in Hawaii" program.

Act 002, Special Session 2021 transferred the oversight of the "Hawaii Made" program for manufactured products and the "Hawaii Made" trademark to the DBEDT. Currently, HDOA owns and enforces the "Made in Hawaii with Aloha" trademark for products that meet or exceed the requirements of HRS 486-119. We believe that HDOA is the agency best equipped to enforce the "Made in Hawaii with Aloha" (MIHA) branding program due to their expertise and experience with Hawaii-made and Hawaii-processed products. We are also concerned that there may be some confusion between "Made in Hawaii" and "Made in Hawaii with Aloha". What happens to the "Made in Hawaii with Aloha" branding program? Will the current MIHA branding program members need to discontinue using the MIHA label?

We appreciate the Legislative intent to transfer the enforcement of the "Made in Hawaii" program to DCCA by repealing the current enforcement authority held by HDOA, but we are concerned about the impacts it may have on HDOA's current MIHA program.



MAUI

CHAMBER OF COMMERCE

VOICE OF BUSINESS

**HEARING BEFORE THE HOUSE COMMITTEE ON
CONSUMER PROTECTION & COMMERCE
HAWAII STATE CAPITOL, HOUSE CONFERENCE ROOM 329
WEDNESDAY, FEBRUARY 16, 2022 AT 2:00 P.M.**

To The Honorable Aaron Ling Johanson, Chair
The Honorable Lisa Kitagawa, Vice Chair
Members of the committee on Consumer Protection & Commerce

SUPPORT HB2227 HD1 RELATING TO THE “MADE IN HAWAII” PROGRAM

The Maui Chamber of Commerce supports HB2227 HD1 renaming the “Hawaii Made” program to the “Made in Hawaii” program as this is consistent with other programs like Made In Maui, Made In Molokai, Maui In Lanai, Made In Maui County, Made In USA, etc. This is the generally accepted term. We also partner with the Department of Business, Economic Development, and Tourism on related industry support and promotional efforts.

The Chamber understands that the “Made in USA” program requires that “all or virtually all” of a product be made in the U.S. But Hawaii has long had a 51% valuation and this is important, and different from the US, because many of the materials or packaging needed to make products in Hawaii are not manufactured here. The Maui Chamber of Commerce has been certifying products of local origin since 1982, which has been used by local manufacturers in three key efforts - first to certify it is product made in the region; second, to participate in trade shows featuring locally made products with a 51% valuation (initially Made In Maui trades shows and now the Made In Maui County Festival and the Made In Hawaii show), and third to certify local origin for exported products.

The Department of Commerce and Consumer Affairs does not feel that it can administer this program. Therefore, may we suggest that, with proper funding, the Department of Business and Economic Development administer and enforce this program.

For these reasons we support the passage of HB2227 HD1 to the next committee.

Sincerely,

Pamela Tumpap
President

To advance and promote a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui’s unique community characteristics.