



GOV. MSG. NO. 793

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

July 6, 2009

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

Dear Madam President and Members of the Senate:

I am transmitting herewith HB1611 HD2 SD2 CD1, without my approval, and with the statement of objections relating to the measure.

HB1611 HD2 SD2 CD1

A BILL FOR AN ACT
RELATING TO LABELING OF MEAT AND FISH
PRODUCTS.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle", written over a horizontal line.

LINDA LINGLE

EXECUTIVE CHAMBERS

HONOLULU

July 6, 2009

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 1611

Honorable Members
Twenty-Fifth 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, House Bill No. 1611, entitled "A Bill for an Act Relating to Labeling of Meat and Fish Products."

The purpose of this bill is to regulate food labeling by requiring distributors of meat and fish products to notify consumers when their products have been gas-treated and to indicate on the label the type of gas used.

This bill is objectionable for two reasons. First, section 2 of this measure, which would require meat that had been gas-treated to bear a label stating that fact, violates the Supremacy Clause of the United States Constitution because it is preempted by the Federal Meat Inspection Act of 1907 (FMIA), as amended by the Wholesome Meat Act of 1967. Section 408 of the FMIA specifically preempts state meat labeling laws that are different from those already established by federal law. Section 2 is inconsistent with current federal meat labeling standards and is, therefore, preempted.

Second, section 3 of this bill would remove from the Hawaii Food, Drug, and Cosmetic Act the criminal sanctions that apply to certain violations of that Act. Section 3 deletes the imprisonment provision in section 328-29(a), Hawaii Revised Statutes, that makes violating section 328-6, Hawaii Revised Statutes, punishable as a criminal misdemeanor and leaves only

STATEMENT OF OBJECTIONS
HOUSE BILL NO. 1611
Page 2

increased monetary fines. The misdemeanor criminal sanctions currently found in section 328-29 are essential to the effective administration of the State's laws with respect to food cleanliness, drugs, and cosmetics. By removing these criminal sanctions, the Legislature has adversely impacted the ability of the Department of Health to protect the health and safety of the public. The prohibited acts described in section 328-6 constitute willful and egregious behavior that, in the interest of safeguarding public health, should continue to be punishable as crimes under section 328-29.

For the foregoing reasons, I am returning House Bill No. 1611 without my approval.

Respectfully,

A handwritten signature in black ink, appearing to read "Linda Lingle", is written over the printed name.

LINDA LINGLE
Governor of Hawaii

A BILL FOR AN ACT

RELATING TO LABELING OF MEAT AND FISH PRODUCTS.

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

1 SECTION 1. Chapter 328, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§328- Fish products; labeling. Fish products that have
5 been gas-treated to approximate the appearance of freshness
6 shall bear a label indicating:

7 (1) The type of gas that was used; and

8 (2) A statement that the gas treatment was used to
9 approximate the appearance of freshness."

10 SECTION 2. Section 159-3, Hawaii Revised Statutes, is
11 amended by amending the definition of "misbranded" to read as
12 follows:

13 "'Misbranded" shall apply to any carcass, part thereof,
14 meat or meat products under one or more of the following
15 circumstances:

16 (1) If its labeling is false or misleading in any
17 particular[-];



- 1 (2) If it is offered for sale under the name of another
2 food[-];
3 (3) If it is an imitation of another food, unless its
4 label bears, in type of uniform size and prominence,
5 the word "imitation" and immediately thereafter, the
6 name of the food imitated[-];
7 (4) If its container is made, formed, or filled as to be
8 misleading[-];
9 (5) If in a package or other container unless it bears a
10 label showing:
11 (A) The name and place of business of the
12 manufacturer, packer, or distributor[-]; and
13 (B) An accurate statement of the quantity of the
14 contents in terms of weight, measure, or
15 numerical count; provided that reasonable
16 variations may be permitted and exemptions as to
17 small packages may be prescribed by the board[-];
18 (6) If any word, statement, or other information required
19 by or under authority of this chapter to appear on the
20 label or other labeling is not prominently placed
21 thereon with the conspicuousness as compared with
22 other words, statements, designs, or devices, in the



1 labeling and in the terms as to render it likely to be
2 read and understood by the ordinary individual under
3 customary conditions of purchase and use[-];

4 (7) If it purports to be or is represented as a food for
5 which a definition and standard of identity or
6 composition has been prescribed by the board under
7 this chapter unless:

8 (A) It conforms to the definition and standard[-];
9 and

10 (B) Its label bears the name of the food specified in
11 the definition and standard and, insofar as may
12 be required by the regulations, the common names
13 of optional ingredients [+]other than spices,
14 flavoring, and coloring[+] present in the
15 food[-];

16 (8) If it purports to be or is represented as a food for
17 which a standard of fill of container has been
18 prescribed by the board under this chapter, and it
19 falls below the standard of fill of container
20 applicable thereto, unless its label bears, in the
21 manner and form as the board prescribes, a statement
22 that it falls below the standard[-];



(9) If it is not subject to paragraph (7), unless its label bears:

(A) The common or usual name of the food, if any there be [-]; and

(B) In case it is fabricated from two or more ingredients, the common or usual name of each ingredient; except that spices, flavorings, and colorings may with the approval of the board be designated as spices, flavorings, and colorings without naming each; provided that to the extent that compliance with the requirements of this subparagraph is impracticable, or results in deception or unfair competition, exemptions shall be established by the board [-];

(10) If it purports to be or is represented for special dietary uses, unless its label bears the information concerning its vitamin, mineral, and other dietary properties as the board, after consultation with the Secretary of Agriculture and concurrence by the department of health, determines to be and prescribes as necessary in order fully to inform purchasers as to its value for the uses [-];



1 (11) If it bears or contains any artificial flavoring,
2 artificial coloring, or chemical preservative, unless
3 it bears labeling stating that fact; provided that to
4 the extent that compliance with this paragraph is
5 impracticable, exemptions shall be established by the
6 board[-];

7 (12) If it fails to bear, directly thereon or on its
8 container, as the board may prescribe, the inspection
9 legend and, unrestricted by any of the foregoing,
10 other information as the board may require to assure
11 that it will not have false or misleading labeling and
12 that the public will be informed of the manner of
13 handling required to maintain the meat or meat
14 products in a wholesome condition[-]; or

15 (13) If the meat or meat products have been gas-treated to
16 approximate the appearance of freshness, but do not
17 bear a label indicating:

18 (A) The type of gas that was used; and

19 (B) A statement that the gas treatment was used to
20 approximate the appearance of freshness."

21 SECTION 3. Section 328-29, Hawaii Revised Statutes, is
22 amended by amending subsection (a) to read as follows:



1 "(a) Any person who violates section 328- or section
2 328-6 shall be fined [~~not more than \$500, or imprisoned not more~~
3 ~~than one year, or both.~~]:

4 (1) \$1,000 for an initial violation; and

5 (2) \$2,000 for each subsequent violation."

6 SECTION 4. The department of agriculture shall display on
7 the department's official website notice of the labeling
8 requirements for gas-treated meat or meat products and fish
9 products required by section 328- or 328-6, Hawaii Revised
10 Statutes. The notice required by this Act shall be continuously
11 available to producers, packagers, distributors, retailers,
12 consumers of meat and fish, and the general public through the
13 department of agriculture's website beginning on August 1, 2009.

14 SECTION 5. If any provision of this Act, or the
15 application thereof to any person or circumstance is held
16 invalid, the invalidity does not affect other provisions or
17 applications of the Act, which can be given effect without the
18 invalid provision or application, and to this end the provisions
19 of this Act are severable.

20 SECTION 6. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



1 SECTION 7. This Act shall take effect upon its approval;
2 provided that sections 1, 2, and 3 shall take effect on August
3 1, 2009.

