



GOV. MSG. NO. 1445

EXECUTIVE CHAMBERS

HONOLULU

NEIL ABERCROMBIE  
GOVERNOR

July 11, 2012

The Honorable Shan Tsutsui, President  
and Members of the Senate  
Twenty-Sixth State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

The Honorable Calvin K.Y. Say, Speaker  
and Members of the House  
Twenty-Sixth State Legislature  
State Capitol, Room 431  
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say, and Members of the Legislature:

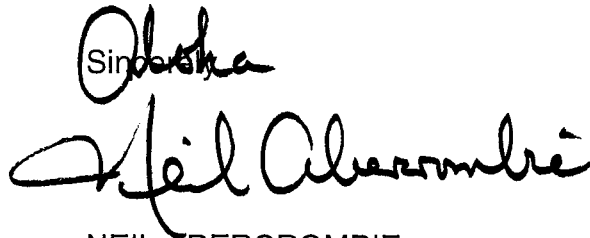
Re: House Bill No. 280, H.D. 1, S.D. 2, C.D. 1

On July 10, 2012, House Bill No. 280, H.D. 1, S.D. 2, C.D. 1, entitled "A Bill for an Act Relating to Agriculture" became law as Act 328 without my signature, pursuant to Section 16 of Article III of the Constitution of the State of Hawaii.

The purpose of this bill is to establish as a class C felony the offense of false labeling of the geographic origin of Hawaii-grown coffee, mandate that Hawaii-grown coffee bean packages be marked with or contain documentation of the coffee's geographic origin, and repeal the requirement that Hawaii-grown green coffee beans be inspected and certified by the Hawaii Department of Agriculture for grade and origin.

The state has to protect the reputation of Hawaii-grown agricultural products, particularly products that are an iconic symbol of the islands. The process and resources that are currently in place need to be strengthened and made more comprehensive. This bill is a first step for the state Department of Agriculture to look at what is necessary to protect our state products. I will be asking the state Department of Agriculture to work with stakeholders to develop additional steps to accomplish this end.

Therefore, notwithstanding my concerns, I have allowed House Bill No. 280, H.D. 1, S.D. 2, C.D. 1, to become law as Act 328, on July 10, 2012, without my signature.

The image shows a handwritten signature in black ink. The signature is written in a cursive style. The first part of the signature is a large, stylized 'N' that loops around. The second part is 'eil Abercrombie'. The word 'Neil' is written in a smaller, more standard cursive script. The word 'Abercrombie' is written in a larger, more stylized cursive script. The signature is written over the word 'Signed' which is partially obscured.

NEIL ABERCROMBIE  
Governor, State of Hawaii

Governor's signature JUL 10 2012

HOUSE OF REPRESENTATIVES  
TWENTY-SIXTH LEGISLATURE, 2011  
STATE OF HAWAII

ACT 328

H.B. NO. 280  
H.D. 1  
S.D. 2  
C.D. 1

## A BILL FOR AN ACT

RELATING TO AGRICULTURE.

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

SECTION 1. Chapter 708, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§708- False labeling of Hawaii-grown coffee. (1) A person commits the offense of false labeling of Hawaii-grown coffee if the person knowingly transports, distributes, advertises, sells, or possesses with the intent to sell Hawaii-grown green coffee, cherry coffee, or parchment coffee that is falsely labeled with regard to the geographic origin of the Hawaii-grown coffee.

(2) For purposes of this section:

"Cherry coffee" means the unprocessed fruit of the coffee plant.

"Geographic origin" means the geographic areas designated as follows:

(a) Hamakua is the Hamakua district on the island of Hawaii, as designated by the State of Hawaii tax map;

(b) Hawaii is the State of Hawaii;



1        (c) Kau is the Kau district on the island of Hawaii, as  
2        designated by the State of Hawaii tax map;

3        (d) Kauai is the island of Kauai;

4        (e) Kona is the north Kona and south Kona districts on the  
5        island of Hawaii, as designated by the State of Hawaii  
6        tax map;

7        (f) Maui is the island of Maui;

8        (g) Molokai is the island of Molokai; and

9        (h) Oahu is the island of Oahu.

10       "Green coffee" means the agricultural commodity comprised  
11       of green coffee beans.

12       "Parchment coffee" means the dried product that remains  
13       when coffee cherries are processed by removing the coffee seeds  
14       from the pulp.

15       (3) False labeling of Hawaii-grown coffee is a class C  
16       felony."

17       SECTION 2. Section 147-2, Hawaii Revised Statutes, is  
18       amended to read as follows:

19       **"§147-2 Duties of department; violations; proceedings;**  
20       **penalties.** The department shall administer and enforce this  
21       part and rules adopted by the department pursuant thereto.



1 The following penalties, remedies, procedures, and actions  
2 shall apply in instances of violations and complaints of  
3 violations of this part, or of the rules adopted by the  
4 department under the authority of this part:

5 (1) Administrative penalty. The department may, after  
6 notice and opportunity for hearing, fine any person  
7 who violates this part or any rule adopted under this  
8 part, not more than \$1,000 for each separate offense.  
9 Each day or instance of violation shall constitute a  
10 separate offense. Any action taken to impose or  
11 collect the penalty provided for in this paragraph  
12 shall be considered a civil action;

13 (2) Nuisance may be enjoined, abated. Violation of this  
14 part or of any rule adopted thereunder is declared a  
15 public nuisance and may be enjoined or abated as such  
16 in a suit filed and prosecuted in the circuit court by  
17 the department or the attorney general. The several  
18 circuit courts are hereby vested with jurisdiction to  
19 prevent and restrain violation of this part or of any  
20 rule effective thereunder;

21 (3) Misdemeanor. Any person who violates this part or any  
22 rule adopted under this part shall be fined not more



1           than \$1,000 or imprisoned not more than one year, or  
2           both;

3           (4) The penalties and remedies prescribed in this section  
4           with respect to any violation mentioned in this  
5           section shall be concurrent and alternative and  
6           neither singly nor combined shall the same be  
7           exclusive and either singly or combined the same shall  
8           be cumulative with any and all other civil, criminal,  
9           or alternative rights, remedies, or penalties provided  
10          or allowed by law with respect to any such  
11          violation[-]; and

12          (5) Nothing in this section shall prohibit the county  
13          police departments and county prosecutors or state law  
14          enforcement agencies from investigating and enforcing  
15          criminal violations of this chapter."

16          SECTION 3. Section 147-4, Hawaii Revised Statutes, is  
17          amended to read as follows:

18          "**§147-4 Rules.** The department may make rules, subject to,  
19          chapter 91:

20          (1) Defining grades and grade labeling requirements of  
21          agricultural commodities and standard containers for  
22          packing of particular agricultural commodities;



- 1       (2) Prohibiting the sale, offering for sale, or  
2       transportation of agricultural commodities unless  
3       packed in standard containers and labeled with the  
4       appropriate grade or offgrade designation; provided  
5       that this prohibition shall not apply to the sale,  
6       offering for sale, or transportation to a plant for  
7       grading, packing, or processing, or transportation to  
8       a warehouse for storage;
- 9       (3) Prohibiting the use of grade terms or abbreviations of  
10      grade terms on agricultural commodities for which no  
11      grades have been established under this part;
- 12      (4) Defining "suitable shipping condition" for  
13      agricultural commodities which are to be shipped for  
14      sale from one island to another within the State or to  
15      points outside the State, and prohibiting such  
16      shipment for sale of agricultural commodities which do  
17      not meet the minimum standards set for "suitable  
18      shipping condition";
- 19      (5) Prescribing records to be kept in connection with  
20      purchases of agricultural commodities by persons,  
21      other than produce dealers purchasing from a producer  
22      or producers, for purposes of resale five or more tons



1 of agricultural commodities during any one calendar  
2 month; ~~and~~

3 (6) Prescribing records to be kept by produce dealers in  
4 connection with the purchase, sale, transport for  
5 sale, solicitation, or negotiation of sale with  
6 respect to an agricultural commodity[-]; and

7 (7) Relating to the inspection and documentation of the  
8 geographic origin of Hawaii-grown green coffee beans.

9 In making the rules the department shall take into account,  
10 among other things, the factors of maturity, condition,  
11 soundness, color, shape, size, and freedom from defects of the  
12 agricultural commodity in question and shall also take into  
13 consideration the official standards, grades or classifications  
14 adopted by the secretary of the Department of Agriculture of the  
15 United States, commonly known as U.S. Grades."

16 SECTION 4. Section 147-7, Hawaii Revised Statutes, is  
17 amended to read as follows:

18 "**§147-7 Inspection and classification of agricultural**  
19 **commodities; fees.** (a) The department may contract with the  
20 United States Department of Agriculture for obtaining the  
21 services of a supervising inspector employed by the federal  
22 department and the establishment of a cooperative inspection





1 service with the United States government. The department, or  
2 the supervising inspector[7] with the approval of the  
3 department, may designate any competent employee or agent of the  
4 department as an inspector to inspect or classify agricultural  
5 commodities in accordance with rules of the department, and at  
6 the time and places designated by the supervising inspector or  
7 the department.

8 (b) The inspectors shall be authorized to inspect or  
9 classify agricultural commodities at the request of persons  
10 having a financial interest in the commodities[~~7, or as mandated~~  
11 ~~by subsection (d),~~] and to ascertain and certify to the persons  
12 the grade, classification, quality, condition, or origin of them  
13 and other pertinent facts.

14 (c) The department may fix, assess, and collect or cause  
15 to be collected fees for the services when they are performed by  
16 employees of the department. The fees shall be on a uniform  
17 basis and in an amount reasonably necessary to cover the cost of  
18 inspection and the administration of this part; provided that  
19 the department may prescribe a reasonable charge for traveling  
20 expenses and extraordinary services when the performance of the  
21 services involves unusual cost in their performance. No fee  
22 shall be charged for an inspection unless the inspection was



1 requested by a person having a financial interest in the  
2 inspected commodity [~~or the inspection was mandated by~~  
3 ~~subsection (d).~~

4 ~~(d) All Hawaii grown green coffee beans shall be inspected~~  
5 ~~and certified by the department for grade and origin unless~~  
6 ~~otherwise specified by rules of the department].~~

7 ~~[(e)]~~ (d) The department may adopt rules establishing the  
8 requirements, procedures, restrictions, and other criteria  
9 necessary for establishing a program of self inspection and  
10 certification of agricultural commodities."

11 SECTION 5. Section 147-23, Hawaii Revised Statutes, is  
12 amended to read as follows:

13 "§147-23 Prohibited acts. (a) No commercial exporter  
14 shall ship any fresh or processed agricultural commodities to  
15 points outside the State unless such products meet the quality,  
16 condition, and labeling requirements of the rules adopted under  
17 this part.

18 (b) No Hawaii-grown [~~green~~] coffee beans shall be shipped  
19 outside the area of their geographic origin to any point within  
20 the State or outside the State unless [~~they have~~] the coffee  
21 bean package containing the beans has been [~~inspected and~~  
22 ~~certified as required in section 147-7(d) or by rules adopted~~



1 ~~under section [147-7(e)]. Areas of geographic origin shall be~~  
2 ~~defined by rules of the department.]~~ marked with or contains  
3 documentation of geographic origin approved by the department."

4 SECTION 6. This Act does not affect rights and duties that  
5 matured, penalties that were incurred, and proceedings that were  
6 begun before its effective date.

7 SECTION 7. If any provision of this Act, or the  
8 application thereof to any person or circumstance, is held  
9 invalid, the invalidity does not affect other provisions or  
10 applications of the Act that can be given effect without the  
11 invalid provision or application, and to this end the provisions  
12 of this Act are severable.

13 SECTION 8. Statutory material to be repealed is bracketed  
14 and stricken. New statutory material is underscored.

15 SECTION 9. This Act shall take effect upon its approval.

APPROVED this            day of            , 2012

GOVERNOR OF THE STATE OF HAWAII

